

	<b>TARRANT COUNTY REGIONAL COMMUNICATIONS</b>	
	<b>Policy 2.3 Internal Investigation Process</b>	
	<b>Effective Date:</b> 12/28/2022	<b>Replaces:</b>
	<b>Approved:</b> Beverly Patton; Director of Communications	
	<b>Reference:</b> TBP 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, and 2.10.	

## I. POLICY

The department's image and reputation depend on the personal integrity and discipline of all departmental employees. To a large degree, the public image of the department is determined by what kind of response the department gives to allegations of misconduct against its employees. The department must competently and impartially investigate all allegations of misconduct by employees and complaints bearing on the department's response to community needs. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In these situations, actions and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of public safety work.

## II. PURPOSE

The purpose of this policy is to describe the procedure that a citizen must follow in making a complaint against department personnel, to outline the procedure for investigating complaints, and to list and define the dispositions of complaints.

## III. PROCEDURES — GENERAL (TBP: 2.04)

### A. Receipt of complaints

The department encourages any person to bring forward grievances regarding misconduct by employees. Department members shall receive all complaints courteously and shall handle them efficiently. All employees are obligated to explain complaint procedures to anyone who inquires.

### B. Responsibilities of supervisors

1. First-line supervisors are primarily responsible for enforcing conformance with departmental standards and orders.
2. First-line supervisors shall know the employees in their charge by closely observing their conduct and appearance.

3. First-line supervisors shall be alert to behavioral changes or problems in their subordinates and, if necessary, document these changes and confer with higher authorities. The first-line supervisor shall assess the behavior, and take or recommend appropriate action.
4. The supervisor shall recommend and, if appropriate, help conduct extra training for employees not performing according to established standards.
5. The supervisor shall recommend and, if appropriate, help conduct extra training for employees not performing according to established standards. The first-line supervisor shall employ counseling techniques sanctioned by the department. Counseling is used to adjust and correct minor, infrequent errors or instances of poor performance and to ascertain the nature of any professional or personal problems that bear on performance.
6. The supervisor shall document all instances of counseling.

#### C. How to make a complaint

A copy of "Citizen Complaint Procedures" will be posted in the public area of the department, provided to media representatives, and given to any person requesting information on how to make a complaint.

#### D. Responsibility for handling complaints

1. All complaints alleging a violation of the law or policy will be investigated.
2. Complaints regarding operations will usually be handled through the chain of command, beginning with the first-line supervisor.
3. Complaints involving how service is provided or a failure to provide service or improper attitudes or behavior may be investigated by an assigned supervisor or by the Director of Communications.
4. Depending on the nature of the complaint, the Director of Communications may request another agency to undertake the investigation. (TBP: 2.06)

#### E. Complaint-handling procedures. NOTE: This same procedure can also be used by agency employees who wish to file a complaint against another employee.

1. All complaints, regardless of nature, can be filed in person, by mail, or by phone at any time. As part of the follow-up investigation, persons making complaints by mail or phone normally shall be interviewed and a written, signed complaint prepared.
2. A signed letter of complaint will be accepted as a signed complaint without requiring any specific form.
3. Anonymous complaints shall be followed up to the extent possible. In case of an anonymous complaint, the employee or other person who receives the anonymous complaint shall reduce the complaint to writing in a memorandum with as much information as possible and forward the report to the Director of Communications.

4. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of any person's complaint. An employee of the department who interferes with, discourages, or delays the making of complaints shall be subject to disciplinary action.
5. Normally, a person with a complaint shall be referred to a supervisor or the Director of Communications, who shall assist the individual in recording pertinent information. If initially reported to a supervisor, the first-line supervisor shall conduct a preliminary investigation. The Director of Communications may, if appropriate, conduct a preliminary investigation. The preliminary investigation consists of questioning the employee, complainants, or witnesses, and securing evidence. Upon completion of the preliminary investigation, the following documents shall be prepared and forwarded through the chain of command:
  - a. a report of the alleged violation
  - b. any documents and evidence pertinent to the investigation
  - c. recommendations for further investigation or other disposition.
6. If the first-line supervisor or other investigators determine that the complainant is apparently under the influence of an intoxicant or drug, or appears to have a mental disorder, or displays any other trait or condition bearing on his or her credibility, the supervisor or investigator shall note these conditions.
7. Any visible marks or injuries relative to the allegation shall be noted and photographed.
8. An employee who receives a complaint through U.S. mail shall place the correspondence and envelope in a sealed envelope and forward it to the Director of Communications, who shall determine investigative responsibility.
9. Complaints received by telephone by dispatchers or other employees shall be courteously and promptly referred to a supervisor or the Director of Communications. The dispatcher or employee shall record the name and telephone number of the complainant and state that the Director of Communications or, if unavailable, the supervisor will call back as soon as practical.
10. In every case, the Director of Communications will be notified of any complaint as soon as possible by the supervisor receiving the complaint. Complaints received overnight will be brought to the Director's attention the next workday. Complaints alleging a violation of the law or any other serious violation should be reported immediately regardless of the time of day. (TBP: 2.07)

F. Disposition of complaints generally

The Director of Communications or his/her designee shall:

1. Notify the complainant, in writing, as soon as practical, that the department acknowledges receipt of the complaint, that it is under investigation and that the complainant will be advised of the outcome.
2. Enter the complaint into the complaint log, assign a complaint number, and have the complaint investigated. Minor complaints alleging rudeness, minor policy violations, and general performance issues may be assigned to a supervisor for investigation and resolution. Allegations of a violation of the law or serious policy violations will be investigated by the Director of Communications, an investigator assigned by the Director of Communications, or an outside agency as determined by the Director.
3. Maintain complaint files separate from personnel files.
4. Take disciplinary action following the investigation, if appropriate.

#### G. Disposition of a serious complaint

1. Allegations of misconduct that might result in discharge, suspension, or demotion, or allegations of criminal charges are serious complaints. The term "serious complaint," in this manual, means that there will be an "internal investigation." Internal investigations examine alleged brutality, gross excesses of legal authority, or allegations involving supervisory or multiple personnel.
2. If a criminal offense is alleged, two separate investigations shall be conducted: a criminal investigation and an administrative or internal investigation. The criminal investigation examines compliance with criminal law while the internal investigation determines compliance with policy and procedure. The Director of Communications will assign these investigations as required.
3. Concurrent Investigations
  - A. concurrent investigation” occurs when an Administrative Investigation and Criminal Investigation related to the same allegation are conducted at of about the same time.
  - B. Procedures for Handling
    - i. Generally, the Administrative Investigation will take place after the Criminal Investigation has concluded or is nearing conclusion.
    - ii. In accordance with Garrity v. New Jersey, administrative investigators will have access to any and all evidence and statements obtained in a criminal investigation against accused employee; however, criminal investigators will not have access to evidence or statements obtained during an Administrative Investigation.
    - iii. No criminal investigation may be conducted by a department employee against another department employee without first notifying the Director of Communications.
    - iv. The Director of Communications has the authority to order a criminal investigation into any allegation of wrongdoing in lieu of, or in addition to, an Administrative Investigation.
    - v. The Director of Communications may request an outside agency to conduct the investigation when it would not be in the

department's best interest for the Everman Police Department's Internal Affairs Unit to conduct the investigation.

- vi. Any employee who is a suspect in a criminal investigation:
  - a.) must be given the Miranda warnings prior to being interviewed;
  - b.) shall be given all the constitutional rights as any other accused person.
3. In cases of a serious complaint the Director of Communications shall:
  - a. Determine if the employee complained of should remain on-duty, be relegated to non-contact assignments, or put on administrative leave until the investigation is complete.
  - b. Determine and assign responsibility for the investigation.
  - c. Cause the complaint to be registered and assigned an investigation number in the complaint log.
  - d. Maintain close liaison with the district attorney in investigating alleged criminal conduct. Where liability is at issue, the Director shall similarly maintain contact with the city attorney or legal counsel.
4. All investigations will be completed within 45 days to include the taking of disciplinary action when necessary. If additional time is necessary to conclude the investigation, a request for extension will be presented to the Director in writing providing justification for the extension. If the Director agrees to an extension a specific number of days will be approved. A copy of the request for extension will be provided to the involved employee and the original placed in the case file. (TBP: 2.05)
5. Upon completion of any investigation, the Director of Communications, or designee, will notify the complainant in writing of the results of the investigation and any action taken. (TBP: 2.10)

#### **IV. INVESTIGATIVE PROCEDURES**

- A. Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case.
- B. Assistance of legal counsel
  1. Employees are permitted to have an attorney, supervisor, or other representative with them in the room during any interview regarding allegations of misconduct.
  2. The employee's representative is limited to acting as an observer at the interview, except that where the interview focuses on, or leads to, evidence of criminality, the attorney may advise and confer with the employee during the interview.

#### **C. All Interviews**

1. Prior to being interviewed, the subject employee shall be advised of the nature of the complaint and provided a copy of the complaint.
2. All interviews will be conducted while the employee is on duty, unless the seriousness of the investigation is such that an immediate interview is required.
3. During interviews conducted by the department, one employee will be designated as the primary interviewer.
4. The complete interview shall be recorded. The recording will note the date and time of the interview, who is present at the interview, the time at which breaks are taken in the interview process, who requested the break, the time the interview resumed, and the time the interview was ended.
5. The employee shall be provided with the name, rank, and command of all persons present during the questioning.

#### D. Interviews for criminal investigative purposes

1. If the Director of Communications believes that criminal prosecutions are possible and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, he/she or another interviewer shall:
  - a. Give the employee the rights as specified in the Texas Code of Criminal Procedure, Article 38.22.
  - b. In addition to the rights set forth in state law, the Director or designee shall advise the employee that if he/she asserts the right not to answer questions no adverse administrative action will be taken based upon the refusal.
  - c. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.

#### E. Interview for administrative purposes

1. If the Director of Communications wishes to compel an employee to answer questions directly related to his or her official duties, the Director of Communications or another interviewer shall advise the employee of the following:
  - a. You are advised that this is an internal administrative investigation only.
  - b. You will be asked and are required to answer all questions specifically related to the performance of your duties and your fitness for office.
  - c. All questions specifically related to employment must be fully and truthfully answered.
  - d. If you refuse to answer these questions, you can be subject to discipline that can be as much as discharge or removal from office.
  - e. Any answers given are to be used solely for internal administrative purposes and may not be used in any subsequent criminal prosecution should such occur.
  - f. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in

disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.

2. In an interview for administrative purposes, no Miranda rights are required.

## **V. INVESTIGATIVE TOOLS AND RESOURCES**

A. In addition to interviews of the employee and witnesses, other activities in support of a complaint investigation or internal investigation may be required, including:

1. The Director of Communications may order medical and laboratory examinations.
2. The Director of Communications or employee in authority may, based on reasonable suspicion or his/her observation, require a department employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.
3. If the employee is believed to be under the influence of alcohol, a licensed breathalyzer operator shall administer the test. The Director of Communications or employee in authority shall witness the test and sign the report.
4. If the employee has a reading of .02 or higher, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty by the Director of Communications or employees in authority.
5. If the employee is believed to be under the influence of self-administered drugs, he/she may be compelled to submit to a blood or urine test. The test shall be administered under medical supervision where hygienic safeguards are met. The sample shall be handled using the same safeguards as evidence in a criminal process.
6. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty as soon as possible by the Director of Communications or other employees in authority.
7. If an employee refuses to submit to a test, (alcohol or drugs) the Director of Communications or other employee in authority shall immediately relieve the employee from duty for failure to cooperate in an administrative investigation.
8. Property assigned to the employee but belonging to the department is subject to inspection if the department has a reasonable suspicion that evidence of work-related misconduct may be found therein. Department property includes files, storage lockers, desks, and vehicles.

B. Photograph and lineup identification procedures

1. Employees may be required to stand in a lineup for viewing for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and may result in dismissal if criminal prosecution is not anticipated.

2. A book of photos of department employees may be maintained for the purpose of identification of an employee accused of misconduct.

#### C. Financial disclosure statements

An employee may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain.

#### D. Polygraph

1. All personnel shall be required to submit to a polygraph if ordered to do so by the Director of Communications.
2. The Police Director may order employees to take a polygraph under the following circumstances:
  - a. The complainant has taken and passed a polygraph concerning the incident, unless the complainant is willing to submit to testing but the polygraph operator determines the complainant is not a fit subject due to mental condition, age, or medication.
  - b. Regardless of whether or not the complainant takes a polygraph (or is positively identified), and the complaint is of such a nature as to bring severe discredit and suspicion on the department and cannot be satisfactorily resolved in any other manner.
3. The results of the polygraph examination shall not be used as the sole basis for disciplinary action against any employee.
4. Any polygraph examination given under the provisions of this order shall be administered by a private contractor licensed to administer polygraph examinations in the State of Texas or must be a licensed examiner from another law-enforcement agency. No employee shall administer an examination to another employee.
5. Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination, or deliberately impeding the administration of the polygraph shall be grounds for disciplinary action and may result in dismissal from the department.

## **VI. ADJUDICATION OF COMPLAINTS**

- A. The Director of Communications will classify completed internal affairs investigations under the following headings:
  1. Unfounded - no truth to allegations.
  2. Exonerated - allegations true, but are the result of adherence to departmental policy or procedure. Exonerated complaints will be reviewed by the Director of Communications for consideration of policy revision.
  3. Not sustained - unable to verify the truth of the matter under investigation.

4. Sustained - allegations are true. Complaints will not be classified as sustained unless the finding is based on facts determined during the investigation. (TBP: 2.04)
- B. Completed investigations classified as unfounded, exonerated, or not sustained will be maintained in internal affairs files in the Directors office. Sustained complaints shall be filed in the individual employee's department personnel file with a copy in the internal affairs files.
  - C. Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim, and the employee's prior disciplinary history. It shall be commensurate with the circumstances surrounding the incident, and the employee's service record, including prior sustained complaints, will be considered.
  - D. Disciplinary records (TBP: 2.09)
    1. The department shall maintain a log of all complaints.
    2. The complaints and internal investigative files shall be kept in a secure area and shall be maintained in accordance with state law and city policy.
    3. The Director shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy.
    4. The Director shall publish an annual or other periodic summary of complaints that shall be made available to the public.