Approved: *Chief Marcia Harnden*	Subject: **821. Personnel Complaints**	
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821.1: PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of members of the Albany Police Department.

This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

In the event this policy conflicts with any applicable collective bargaining agreement, the terms of the collective bargaining agreement will control.

821.2: POLICY

The Albany Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

The Administrative Lieutenant is responsible for developing and coordinating in-service training designed to further employees' knowledge and understanding of proper and effective police methods and techniques. The training will be designed to foster positive and constructive techniques for improving employee productivity, effectiveness, and professionalism. Supervisors, Managers, and/or the Chief of Police may mandate training for employees found to be deficient in any necessary skills.

821.3: PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state, or local law, policy, or rule. Personnel complaints may be generated internally or by the public.

821.3.1: COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

a. **Informal** – A matter in which a supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

b. **Formal** – A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Internal Affairs Investigator, depending on the seriousness and complexity of the investigation.

c. **Incomplete** – A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Internal Affairs Investigator, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

821.3.2: SOURCES OF COMPLAINTS

The following applies to the source of complaints:

a. Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.

b. Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.

c. Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.

d. Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.

e. Tort claims and lawsuits may generate a personnel complaint.

821.3.3: DISSATISFACTION OF SERVICE

Dissatisfaction of service inquiries are defined as a matter in which the complaining party does not specify or name an employee, complaints of overall dissatisfaction of service, and other complaints that do not fall under the categories of informal, formal, or incomplete.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state, or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures, or the response to specific incidents by the Department and should be documented as dissatisfaction of service.

Dissatisfaction of service inquiries should be documented in Guardian Tracking using “Not Applicable, NA” as the employee.

821.4: AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

821.4.1: COMPLAINT FORMS

a. Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website.

b. Personnel complaint forms in languages other than English may also be provided, as determined necessary or practical.

821.4.2: ACCEPTANCE

a. All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor.

b. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone.

c. Such complaints will be directed to a supervisor.

    1) If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant.

    2) The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

d. Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs, or physical evidence may be obtained as necessary.

e. Complainants shall be notified of the following at the appropriate stages in the investigation:

    1) Verification that the complaint has been received;

    2) Notification that an investigation has or has not been initiated;

    3) Notification that the investigation has concluded.

821.5: DOCUMENTATION

a. Supervisors shall ensure that all complaints are documented on a complaint form.

b. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

c. All complaints and inquiries should be documented electronically.

1) The documentation shall include the nature of the complaint and the actions taken to address the complaint.

2) On an annual basis, the Support Services Captain or designee will compile an annual statistical summary of complaints and internal affairs investigations, which will be made available to the public and department employees.

821.5.1: COMPLAINTS ALLEGING PROFILING

Complaints related to profiling should be clearly marked to assist in reporting as required in the Bias-Based Policing: Policy 234 (ORS 131.925).

821.6: COUNSELING

Forms of informal evaluation and counseling are not considered discipline. Employee counseling should also include requisite training, if appropriate. The counseling session should:

a. Explain the reason for the counseling and what performance or misjudgment occurred and the need for corrective action.

b. Indicate how the supervisor expects the employee to correct the situation.

c. Explain what consequences will be if they fail to correct the situation.

821.7: DUE PROCESS

a. No disciplinary action shall be taken against an employee without just cause.

b. Prior to taking disciplinary action against an employee a supervisor shall:

1) Notify the employee in writing of the charges and the proposed disciplinary action; and

2) Provide the employee with an opportunity to respond to the charges at an informal hearing which may be recorded with the person or persons having authority to impose the proposed disciplinary action.

821.8: PROGRESSIVE DISCIPLINE

a. The administration of discipline is generally expected to be progressive in nature, with relatively minor violations of rules resulting in minor disciplinary action for first offenders.

b. Repetitive similar violations, or more serious violations, would generally result in progressively more serious forms of discipline being administered.

c. Nothing in this policy is intended to preclude the administration of more serious forms of discipline, including termination, for a first offense if the seriousness of the offense warrants it.

d. Disciplinary actions or measures shall generally be invoked in the order listed:

   1) Written reprimand.

   2) Reduction in pay or suspension with loss of pay.

   3) Demotion.

   4) Discharge.

e. Discipline, in lieu of the above-listed actions and with the employee's concurrence, may also include loss of vacation and/or holiday time.

f. Serious violations may be dealt with by any of the above disciplinary measures on the first or subsequent offenses.

g. As appropriate, the applicable disciplinary ranges and sanctions established under OAR Chapter 265 will be followed.

821.9: ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows:

821.9.1: SUPERVISOR RESPONSIBILITIES

a. In general, the primary responsibility for the receipt of, and initial inquiry into, a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct.

   1) If it is determined that a formal internal investigation of the complaint or allegation is warranted, the investigation shall be conducted by a Lieutenant or higher-ranking officer.

   2) The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

b. A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

c. The responsibilities of supervisors include, but are not limited to:

1) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed. The original complaint form will be directed to the Lieutenant of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.

2) Responding to all complaints in a courteous and professional manner.

3) Resolving those personnel complaints that can be resolved immediately. Follow-up contact with the complainant should be made at the earliest available opportunity after receiving the complaint.

4) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the members' Division Captain and Chief of Police are notified via the chain of command as soon as practical.

5) Promptly contacting the Chief of Police, via chain of command, for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination.

6) Forwarding unresolved personnel complaints to the member's Division Captain, who will determine whether to contact the complainant or assign the complaint for investigation.

7) Informing the complainant of the investigator's name and the complaint number at the earliest available opportunity.

8) Investigating a complaint as follows:

A. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.

B. When appropriate immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.

9) Ensuring that the procedural rights of the accused member are followed, including rights under any applicable collective bargaining agreement and ORS 236.350-360.

10) Ensuring interviews of the complainant are generally conducted during reasonable hours.

821.9.2: ADMINISTRATIVE INVESTIGATION PROCEDURES

The following applies to employees covered by the provisions of ORS 236.350 through ORS 236.360:

a. Interviews of an accused employee shall be conducted during reasonable (normal waking) hours and preferably when the employee is on-duty unless the seriousness of the investigation requires otherwise. If the employee is off-duty, he/she shall be compensated.

b. Unless waived by the employee, interviews of an accused employee shall be at the Albany Police Department or other reasonable and appropriate place.

c. No more than two interviewers should ask questions of an accused employee.

d. The interviewers shall inform the employee of their authority to compel a statement and of the identity of the investigators and all persons present during the interview.

e. Prior to any interview, an employee should be informed of the nature of the investigation and of facts reasonably sufficient to inform the employee of the circumstances surrounding the allegations under investigation.

f. All interviews should be for a reasonable period and the employee's personal needs should be accommodated.

g. No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.

h. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a Garrity advisement and after the investigator has consulted with the prosecuting agency.

i. The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview, and upon request any existing transcripts of the interview or reports describing the interview, shall be provided to the employee prior to any subsequent interview.

j. All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual’s statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.

k. In a disciplinary or administrative investigation, the employee's chosen representative cannot be required to disclose, or be subject to disciplinary action for refusing to disclose, statements made by the employee to the representative for purposes of the representation.

l. As soon as it is determined that the employee may be charged with a criminal offense, the employee shall be informed of the employee’s right to consult with criminal defense counsel with respect to the criminal charge.

m. All employees shall provide complete and truthful responses to questions posed during interviews.

n. No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.

o. If reasonable suspicion of drug or alcohol use, investigative steps should follow Article 11 of the Collective Bargaining Agreement. For non-bargaining employees' steps will be followed in accordance to the City of Albany Human Resources: Policy HR-SF-04-007.

p. Investigations into fitness for duty shall follow the procedures in Fitness For Duty: Policy 861.

q. Employees will not be required to submit financial disclosure statements pursuant to an Administrative Investigation.

r. Employees will not be required to participate in live or photographic line-ups pursuant to an Administrative Investigation.

821.9.3: ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough and complete. The report shall be written using the Notice of Investigation Continuation: Form A108a.

a. A108 Notice of Investigation – This 2-page form is used to notify the employee and Association of the nature of the investigation and the allegations. Once assigned, the supervisor will meet with the affected employee and explain the nature of the investigation. The supervisor and employee will sign the form under the block titles "Notice of IA Delivered." A copy will be given to the employee and the Association at that time.

b. Notice of IA Interview: Form A108b – This form is used to notify the employee of the specific date and time for any interview. A copy will be given to the Association at the time the employee is notified. A copy will also be forwarded to the Human Resources Director.

c. Notice of Admonishment Rights: Form A108c – This form will be given to any employee who is questioned during the course of an investigation. The employee will read and sign the form before the interview. The investigator will also sign this form. Copies of the form will be given to the employee and the Association.

d. Profiling Complaint: Form A108d - This form will be used to report complaints alleging profiling to the Law Enforcement Contacts Committee (LECC).

e. Notice of Pre-Disciplinary Hearing – This form is used to notify the employee of the opportunity to present a written or oral response to the Chief of Police or designee prior to imposition of any recommended discipline as outlined in Article 9 (A)(2-4) of the collective bargaining agreement.

Refer to the collective bargaining agreement or HR policy for further information.

821.9.4: DISPOSITIONS

a. Each personnel complaint/allegation shall be classified with one of the following dispositions as a conclusion of fact:

1) **Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

2) **Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

3) **Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

4) **Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

5) **Policy Issue** - When everything in the complaint is determined to be accurate, including the officer's actions, but the issue appears to require a modification of policy, the finding for the officer should be exonerated. The need for potential policy modification shall be immediately directed to the Chief of Police for action.

b. If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

821.9.5: COMPLETION OF INVESTIGATIONS

a. The Support Services Captain shall ensure that investigations are completed, and employees are provided notification of intended discipline in accordance with the collective bargaining agreement, HR policy, and ORS 236.350-370.

1) Upon completion of an investigation, the report should be forwarded through the chain of command to the Chief of Police and the involved employee's supervisor.

2) Supervisors shall make a good faith effort to complete an internal investigation within thirty (30) days.

3) If the Supervisor cannot complete the internal investigation within the thirty-day (30) period, the Supervisor or Division Captain will notify the Association (RE: Collective Bargaining Agreement (CBA) language Article 9 (B) (1) (k)). For non-bargaining employees the employee will be notified.

b. Time limits for completion do not apply when (ORS 236.360(6)(b)) applies:

1) The investigation involves a peace officer who is incapacitated or unavailable.

2) The investigation involves an allegation of workers' compensation or disability fraud by the peace officer.

3) The peace officer, in writing, waives the limit.

4) The investigation requires a reasonable extension of time for coordination with one or more other jurisdictions.

5) The investigation involves more than one peace officer and requires a reasonable extension of time.

6) The alleged misconduct is also the subject of a criminal investigation or criminal prosecution. Time does not run for the period during which the criminal investigation or criminal prosecution is pending.

7) The investigation involves a matter in civil litigation in which the peace officer is a named defendant or the peace officer's actions are alleged to be a basis for liability. Time does not run for the period during which the civil action is pending.

8) The investigation is the result of a complaint by a person charged with a crime. Time does not run for the period during which the criminal matter is pending.

821.10: ADMINISTRATIVE SEARCHES

a. Assigned lockers, storage spaces and other areas, including desks, offices, and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

b. Prior to the search, notice will be given to the employee who may elect to be present with an Association representative, provided that the employee's presence does not delay the search in excess of 45 minutes. In the event the employee is unable to attend or declines to attend the search, a search will still be conducted in the presence of an Association representative.

c. Once the item sought has been located, the Department shall not open any personally owned containers found in the locker, desk, or other City-owned property.

d. Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

821.11: ADMINISTRATIVE LEAVE

a. When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave.

b. Any employee placed on administrative leave:

1) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.

2) Shall be required to continue to comply with all policies and lawful orders of a supervisor.

3) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift and will report as ordered.

821.12: CRIMINAL INVESTIGATION

a. Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

b. The Chief of Police shall be notified as soon as practical when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

c. A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

d. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

e. The Albany Police Department may release information concerning the arrest or detention of any member, including an officer, which has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

821.13: POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

821.13.1: DIVISION CAPTAIN RESPONSIBILITIES

a. Upon receipt of any completed personnel investigation, the Division Captain of the involved member shall review the entire investigative file, the member's personnel file, and any other relevant materials.

b. The Division Captain may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

c. Prior to forwarding recommendations to the Chief of Police, the Division Captain may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

d. When forwarding any written recommendation to the Chief of Police, the Division Captain shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

821.13.2: CHIEF OF POLICE RESPONSIBILITIES

a. Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Captain for further investigation or action.

b. Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:

    1) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline;

    2) An opportunity to respond orally or in writing to the Chief of Police or designee as outlined in the collective bargaining agreement.

        A. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.

        B. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

c. Once the member has completed their response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline.

d. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline.

e. Once the Chief of Police has issued a written decision, the discipline shall become effective.

821.14: PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police or designee after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

a. The response is not intended to be an adversarial or formal hearing.

b. Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.

c. The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.

d. In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.

e. The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

821.15: RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

a. In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file.

b. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

821.16: POST-DISCIPLINE APPEAL RIGHTS

a. Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment.

b. The employee has the right to appeal using the procedures established by any collective bargaining agreement and/or personnel rules.