


AURORA POLICE DEPARTMENT DIRECTIVES MANUAL

10.9	Title: DISCRIMINATION, HARASSMENT AND SEXUAL HARASSMENT COMPLAINT PROCEDURE		
	Approved By: Vanessa Wilson, Chief of Police		Duty Honor Integrity
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	Associated Policy:		
	References: Title VII Civil Rights Act of 1964, Colorado Anti-Discrimination Act		
Review: Human Resources, APD Legal Advisor, Human Resources Attorney, Internal Affairs			Page 1 of 9

10.9 DISCRIMINATION, HARASSMENT AND SEXUAL HARASSMENT COMPLAINT PROCEDURE

The Aurora Police Department adheres to the City of Aurora Equal Employment Opportunity Policy except the portion on Reporting and Investigation of Harassment, which is covered by this Directive.

10.9.1 Policy and Scope

The Department's policy and procedure on discrimination, harassment and sexual harassment applies to all employees of the Department.

The Aurora Police Department prohibits discrimination or harassment based on any protected class or sexual harassment. All APD employees are expected to adhere to and cooperate with the principles of equal employment opportunity ("EEO") and to refrain from discrimination, harassment, and sexual harassment as defined in this Directive.

The Aurora Police Department prohibits retaliation against an employee for filing a complaint regarding discrimination, harassment or sexual harassment as defined in this Directive, or for reporting a violation or potential violation of this Directive in good faith or for assisting in an investigation.

Sworn and non-sworn managers or supervisors aware of retaliation or receive reports of retaliation must take immediate and appropriate action, including reporting the issue to anyone in the chain of command and/or to Human Resources.

10.9.2 Definitions

Discrimination: the unfair or unequal treatment of a person or group (either intentional or unintentional) based on race, color, religion, national origin, sex (including pregnancy, childbirth, and related medical conditions), ancestry, sexual orientation, age, disability status, marital status, genetic information, gender identity or expression, active military personnel status, citizenship status, transgender status, or any other class, attribute, or affiliation that is protected by state, federal, or applicable local law.

Harassment: is verbal, visual or physical conduct that denigrates or shows hostility toward an individual because of a legally protected characteristic.

Conduct that may constitute harassment may include, but is not limited to:

- Derogatory written or oral statements, epithets, slurs, or negative stereotyping
- Display or circulation of offensive jokes, drawings or photos or any written or graphic material that denigrates or shows hostility toward an individual or group (including digital/electronic displays or circulations)
- Threatening, intimidating or hostile acts;

Sexual Harassment: is any sexual advance, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- (a) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) The conduct has the purpose or effect, or potential effect, of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive work environment.

Conduct that may constitute sexual harassment may include, but is not limited to:

- Unwelcome sexual flirtations, advances or propositions;
- Derogatory, vulgar or graphic written or oral statements regarding one's sexuality, gender or sexual experience;
- Unnecessary touching, patting, pinching or attention to an individual's body;
- Physical assault;
- Unwanted sexual compliments, innuendoes, suggestions or jokes;
- The display of sexually suggestive pictures or objects;
- The transmission of sexually suggestive communications, in digital or any other format.

10.9.3 It is the Department's intent that the Director of Human Resources will handle the investigation of allegations of harassment and discrimination based on a protected class or sexual harassment. Allegations of discrimination or harassment not based on the above protected classes will be handled as any other complaint of alleged misconduct.

10.9.4 Complaint Procedure

All Employees may file a complaint without fear of retaliation or reprisal. All complaints must be brought forth in good faith. Employee(s) should make a timely complaint. This will enable the Department to promptly investigate and correct any behavior which may be in violation of this Directive. An employee who believes they have witnessed or were the subject of an act of discrimination or harassment must report the incident within 300 days of the occurrence. While a complaint may appear to be time-barred, nothing precludes the Director of Human Resources from initiating an internal administrative investigation for the best order and discipline of the agency.

The complaining member(s) should submit a written or verbal complaint to the Chief of Police, Deputy City Manager, City Manager, or Director of Human Resources.

During non-administrative hours, and in the event the complainant believes that immediate reporting is necessary, the complainant is encouraged to submit a written or verbal complaint to anyone in the Chain of Command or the Watch Commander. The complaint will be reported to the Director of Human Resources as soon as reasonably possible by submitting to EmployeeRelations@auroragov.org or 303.739.7225.

If the subject of the complaint is the Chief of Police, the employee should submit the complaint directly to the Director of Human Resources and/or the City Manager or Deputy City Manager.

An investigation may continue even if the complainant(s) fails to pursue the complaint, withdraws the complaint, or separates from their employment with the Department.

The Director of Human Resources will determine when a need exists to appoint an outside investigator.

10.9.5 Report of Findings Meeting

Upon receiving a report of the findings of an EEO investigation, the Chief of Police, the Director of Human Resources, the City Manager's Office and the City Attorney's Office, as appropriate, will review the report. As provided by Charter and Departmental Directive, the Chief of Police will prepare final determinations and findings regarding the complaint pursuant to the dispositions set forth in 10.9.7 below. The final determination and findings and any action(s) taken, discipline or otherwise, will be subject to all applicable provisions of the Home Rule Charter, City ordinances and Departmental Directive or City policies and procedures.

EEO Investigations of APD employees will be recorded by Internal Affairs. The Report of Findings will be reviewed by the Internal Affairs Commander and the Deputy Chief of Police. Should the Internal Affairs Commander and Deputy Chief of Police determine potential violations of APD directives may exist based on the EEO investigation, an IA investigation will be initiated pursuant to Directive 3.07.

If IAB, during the course of an active IA investigation, learns of possible EEO violations arising out of the same incident(s) that are the subject of the IA investigation, the IAB Investigator and Human Resources will coordinate the investigations.

10.9.6 Supervisory Responsibility

Any supervisor or command level officer who receives an allegation or observes a suspected allegation against an employee for violations of rules, regulations, laws, statutes ordinances and/or misconduct concerning discrimination, harassment, or sexual harassment as defined in this Directive will:

- (a) Document all complaints of harassment, sexual harassment or discrimination on the Harassment, Sexual Harassment and/or Discrimination Investigation Summary form.
- (b) Forward the Harassment, Sexual Harassment and/or Discrimination Investigation Summary form to the Director of Human Resources within two working days.

The Director of Human Resources will advise the Chief of Police and the City Attorney's office (Police Legal Advisor or Human Resources Attorney) that a complaint was filed.

Supervisory and command personnel may impose emergency relief from duty (administrative leave) only with the approval of the Duty Executive Officer.

10.9.7 Complaint Dispositions

All formally investigated complaints will be assigned one of the following final disposition codes:

- (a) Not Sustained: A final finding of a complaint of misconduct which indicates an investigation failed to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint.
- (b) Sustained: A final finding that indicates there is sufficient evidence to clearly prove the allegations made in a complaint of misconduct.

- (c) Requires Further Investigation – Conduct, or some part of the conduct alleged in the complaint, does not implicate any legally protected status covered by this Directive. The conduct potentially violates other departmental directives and should be referred to IAB. The disposition for further investigation can be assigned even if one of the above dispositions were assigned for another portion of the conduct at issue.

10.9.8 EEO Files

All complaints will be maintained in an EEO file in Human Resources. The contents of the EEO files are confidential. Maintenance and purging of records will be accomplished according to City's retention schedule. Work product in support of the investigation in any format is directly accessible only by the Director of Human Resources, Chief of Police, Deputy Chief of Police, City Attorney's Office, and City Manager's Office. Access to the EEO files is limited to the Director of Human Resources, the Chief of Police and the Deputy Chief of Police, City Attorney's Office, and City Manager's Office.

It is prohibited for any employee of the Department to discuss an open EEO case with anyone without permission of the Chief of Police, the Deputy Chief of Police or Director of Human Resources, except that the subject of an EEO Investigation may consult legal counsel.

10.9.9 Appeal of Disciplinary Action

Fines, Suspensions, Reimbursements, Demotions or Dismissals are subject to appeal as stated in Directive 10.5.6 – Appeal of Disciplinary Action and/or the City of Aurora Employee Handbook.

10.9.10 EEO Investigator - Authority and Responsibility

- (a) The Investigator appointed by the Director of Human Resources acts directly pursuant to the command and with the authority of the office of the Chief of Police. The investigator has the authority to require any employee of the Department, regardless of rank, to make a full and complete disclosure pertaining to the commission of, or omission of, any act which might conflict with that or any other employee's duties and obligations as an employee of the Department.
- (b) Human Resources or an appointed outside investigator will have the full authority to conduct an investigation without interference from any employee. The activities of the investigator will constitute an internal departmental investigation for the purposes of Home Rule Charter, Section 3-16(8)(j).

- (c) The primary duty of the Investigator is to promote a positive working environment free from discrimination, harassment, or sexual harassment for all employees, sworn and civilian, within the Aurora Police Department. The investigator will direct efforts toward conducting an efficient, impartial, and prompt investigation of allegations of misconduct by department employees.
- (d) Human Resources will notify the complainant in writing when a complaint has been received, when an investigation is being conducted and when a disposition has been made.
- (e) The Human Resources Department will complete an annual report of investigations. The annual reports will contain the following:
 - EEO case number.
 - Violation(s) charged.
 - Disposition.

10.9.11 Individual Employee Responsibility to Cooperate in an Investigation

Employees are required to cooperate in any investigation under this Directive and to answer questions by, or render material and relevant statements to, a supervisor or the Investigator. Employees will answer all questions fully and truthfully and will not omit any material facts.

10.9.12 Wearing of Weapons During EEO Interviews and Discipline Hearings

Employees will not be armed during interviews with the Investigator, or during pre-disciplinary/disciplinary hearings with the Chief of Police.

10.9.13 Officers Rights Related to EEO Investigations

The below sections of Officer Rights apply only to formal EEO investigations and do not apply to preliminary investigations. Due to State of Colorado laws related to privacy and confidentiality, as they apply to EEO investigations, the Officers' Rights is modified for EEO cases. Specifically, the use of an observer during an EEO related administrative interview is prohibited.

Section 1: No police officer will be disciplined or discriminated against regarding the officer's employment, or be threatened with any such treatment, by reason, of the exercise of the rights granted in this police officers' bill of rights.

- Section 2: No police officer will be discriminated against or penalized regarding the officer's employment because of national origin, race, creed, sex, religion or sexual orientation.
- Section 3: No officer will have any comment adverse to the officer's interest entered in the personnel or supervisor's file without having the opportunity to read and sign the instrument containing the comment. The officer may, within ten days of learning of the adverse comment, file a written response to be attached to the adverse comment.
- Section 4: An officer under internal investigation will be informed of the general nature of the investigation as soon as practical after the investigation is initiated. This provision will not apply if the Chief of Police determines the investigation would be compromised by such notification.
- Section 5: An officer under investigation will be informed in writing of the nature of the investigation prior to any interview. In all EEO cases the Investigator will be the complainant.
- Section 6: Internal investigation interview sessions will be for reasonable periods and will be timed to allow for such personal necessities and rest periods as are reasonably necessary. The time of all such breaks, as well as the beginning and ending times of the interview, will be noted in the reports/recordings of the interview.
- Section 7: Whenever an officer who is the subject of the investigation is interviewed pursuant to an internal investigation, the interview documents, including written reports and/or sound or video recordings, will contain the names of all persons present during the interview. The name of the officer interviewed and the date, time, and times of the breaks during the interview will also be included.
- Section 8: If feasible the internal investigation interview will be conducted during the officer's normal work shift.
- Section 9: Internal investigation interviews with members will be conducted in a private setting, if possible.
- Section 10:
- (A) No police officer will be required to submit to a polygraph examination. Refusal will not result in any disciplinary action, prejudice, or other detriment or penalty against the member.
 - (B) If the police officer refuses to submit to a polygraph no adverse inferences can be drawn from such refusal.

- (C) Should the officer agree to submit to a polygraph examination, the relevant questions asked to be narrow in scope and relate specifically to the allegations which are the subject of the investigation, and the responses to such relevant questions will be the only responses considered regarding the truth or falsity of such allegations.
- (D) Should the officer submit to a polygraph examination and, in the opinion of the polygrapher, the results indicate the officer is being deceptive, and any corroborating evidence is obtained, directly or indirectly from the polygraph examination, then the results of the polygraph examination may be used as a factor by the IAB investigator and the Chief of Police in the resolution of the pending investigation.
- (E) Should the officer submit to a polygraph examination and, in the opinion of the polygrapher, the results indicate deception and no corroborating evidence is obtained directly or indirectly from the polygraph examination, then the results of such examination will be disregarded by the IAB investigator and the Chief of Police.
- (F) Should the officer submit to a polygraph examination and, in the opinion of the polygrapher, the results indicate truthfulness, then the result of such examination will be used as a factor by the IAB investigator and the Chief of Police in the resolution of the issues of the pending investigation.
- (G) Nothing herein will be deemed to prevent any member who is the subject of or a witness in any internal investigation from requesting and receiving a polygraph examination. Such examination will be scheduled by the Internal Affairs Section.
- (H) The department will compile and maintain a list of not fewer than three polygraphers who are acceptable to the department and who are in no way connected with the department. The officer who has agreed to submit to a polygraph examination may choose who will administer such examination, either from the names on the list or from among the department members who are qualified polygraphers. In the event the officer chooses a polygrapher who is not a member of the department, the Aurora Police Association agrees it will pay for the costs of such examination. The results of such examination will be forwarded by the polygraph examiner directly to the Chief of Police under confidential cover.

- Section 11: Prior to an officer being questioned regarding any incident that could result in departmental charges, the person conducting the internal investigation interview will give the administrative advisement.
- Section 12: No officer being interviewed will be subjected to profane language or physical threats except that an officer refusing to respond to questions will be informed that failure to answer questions directly related to the investigation may result in disciplinary action.
- Section 13: If one or more of the procedures under this Bill of Rights is not followed, and discipline is imposed upon the officer, and that discipline is appealed to the Civil Service Commission, the Civil Service Commission may consider the effect such violation(s) may have had upon the fundamental fairness and reliability of the investigation.

10.9.14. Review of EEO Reports by Subject Employee and Other Access

When any employee is the subject of an investigation and the investigation is complete, the employee has the right to review the investigator's report of findings, after obtaining approval of the Chief of Police. The subject employee will notify the Chief of Police of their intention to review the file in writing within 5 business days after receiving sustained charge(s). After the Chief of Police receives the notification by the subject employee, the Chief of Police will consult with the City Attorney's Office and the Director of Human Resources. Once the consultation has taken place, the subject employee will be notified in writing by the Chief of Police whether they will be allowed to review the file.

The Chief of Police or Director of Human Resources reserves the right to redact information deemed confidential from the file prior to its review by the subject employee. Once the subject employee receives notice the file is ready to review, the subject employee has 5 business days to contact the Director of Human Resources to make arrangements to review the file. During the file review, any recordings or documents created by the subject employee at the time of the review will remain with the file. The review of the file will be conducted under observation by the Director of Human Resources.

The Pre-disciplinary meeting will be conducted after the file review.

Access to EEO records in connection with investigations will be granted only upon approval of the Chief of Police, Director of Human Resources, and the City Attorney's Office.