



**Colorado Springs Police Department
General Order 602**

**Section 16: Investigative Rights -- Professional Ethics and
Discipline**

Active Date: 4/27/2016

Supersedes Date: 12/10/1998

Approved
Peter Carey
General Order

.01 Purpose

To establish the rights of the Department and of employees in internal investigations, and to declare a Bill of Rights for sworn and civilian employees.

.02 Cross Reference

[GO 1610, Discipline](#)

[GO 1620, Complaints and Internal Investigations](#)

[GO 1626, Rights of Appeal](#)

.03 Discussion

In order to balance the best interests of society, the Department, and its employees, in the conduct of an internal investigation, it is imperative that Department personnel know and understand their rights pertaining to such an investigation. That knowledge serves to protect all concerned parties and assures a proper determination and conclusion.

.04 Policy

These provisions pertain to all employees of the Department, civilian and sworn, and are intended to serve as a standard by which all employees shall conduct themselves in the course of an internal investigation.

.05 Definitions

As used in this Order, all terms will have the meaning defined in [GO 1610.05](#).

.10 Requirement to Answer Questions

Department personnel are required to answer questions relating to their duties. Refusal to answer such questions will result in the employee's dismissal from employment pursuant to the department's due process procedures.

If a Department employee refuses to answer questions in a personnel investigation, the Garrity Advisement, attached below, will be given to the employee in writing for the employee's completion. If the employee chooses not to answer questions after reviewing the Garrity Advisement, the investigator will order the employee to truthfully answer questions. If the employee still refuses, the interview will be terminated. Documentation of the refusal will be forwarded to the Chief of Police.

Any required statements could be used against the employee in a disciplinary action or civil proceeding. The statements would not be admissible in any subsequent criminal actions to the extent prohibited by Garrity and other pertinent case law.

The Garrity Advisement currently being used for CSPD Personnel Investigations is located on the CSPD library drive under the Internal Investigations Forms folder. The advisement currently being used is subject to change at any time. This advisement may be used for sworn and civilian employees. A copy of the advisement form is attached in section .70 of this order.

.20 Employee

The department recognizes that Personnel Investigations can be stressful for the person being interviewed. In an effort to minimize this stress, the employee that is the subject of a Level Two Investigation will be permitted to have an advisor present during his/her interview. This privilege does not apply if the investigation is still in the Preliminary Inquiry stage. The advisor shall be of the subject employee's choosing, as long as the chosen advisor is available to permit a timely interview and is not involved in the incident under investigation.

Barring unusual or extreme circumstances, interviews conducted by department supervisors of the accused employee, other than Internal Affairs Section investigators, will be completed within 14-days from the time they are identified. A Commander may extend this time period.

Interviews related to Internal Affairs investigations will be conducted within a reasonable time frame, at the discretion of the Internal Affairs Section Commanding Officer. The purpose of the advisor, who may be another department employee, a representative of the Police Protective Association, or an attorney, is to provide support and advice relative to the procedural and administrative dimensions of the process.

The advisor will not be allowed to interfere with the interview or give any advice that would be contrary to complete honesty and truthfulness. The advisor will not be allowed to converse during the course of the interview unless requested to do so by the investigator. The employee's

advisor may not be present during polygraph examinations, or during pre- and post-polygraph interviews.

Employees are reminded of their responsibility, per department policy, to tell the truth, and of the consequences for departing from the truth during an administrative interview. An omission of facts also constitutes departing from the truth. Employees are reminded of the difference between a criminal interrogation, and an administrative interview. Situations may also occur where it would be impractical for an employee to have an advisor present during an interview. On these occasions, an interview may be conducted at the discretion of the Chief of Police.

Witness Officers/Civilians: Any department employee who is interviewed as a witness, and not the subject of the investigation, shall be considered a witness. These interviews are considered fact finding and thus a witness is not entitled to have an advisor present during the interview. Interviews may be recorded by Internal Affairs, but may not be separately recorded by witness interviewees, to protect the privacy right of the person(s) who are the focus of the investigation. If during the course of the interview the investigator gathers new information that causes him/her to believe that the witness may have violated policy or law, it is the responsibility of the investigator to advise the witness of the same and provide them with all rights afforded them as the subject of an investigation.

.30 Search of Equipment

Reasonable searches of departmental equipment may be conducted and may include computers, cell phones, lockers, desks, and facilities assigned to the exclusive use of an employee.

.40 Special Examinations

An employee may request a breathalyzer, blood, urine, physical, or mental examination or polygraph examination if s/he believes such would be beneficial to his/her defense. Examinations requested by the employee will be conducted at the discretion of the Department. The Department may also require such tests of the employee, based upon reasonable cause. The results of such tests would be limited to administrative use, except as provided by law. Polygraph examinations for supervisory-initiated investigations or Internal Affairs investigations will not be administered without the specific prior approval of the Chief of Police. When polygraph examinations are administered, they will be specifically, directly, and narrowly related to the performance of the subject employee's official duties, and to the issues raised in a specific investigation.

The results of special examinations shall be considered by the Department and any subsequent administrative review mechanism in determining proper disciplinary action.

.42 Appeal Procedure

Appeals of disciplinary findings may be made in accordance with the Rules and Regulations of the Colorado Springs Civil Service Commission, the Code of the City of Colorado Springs and the Personnel Policies and Procedures Manual of the City of Colorado Springs, as appropriate.

.50 Special Procedures for Command Failure

The Chief of Police shall institute an investigation when misconduct is attributable to inefficient or ineffective supervision. The involved command or supervisory employee shall be subject to discipline by the Chief of Police in compliance with the Civil Service Rules, as applicable.

.52 Notifications

Whenever any employee of this Department becomes involved in an incident involving: the use of deadly force that results in the death or bodily injury of another person; the use of any Department equipment in a manner that results in the death or serious bodily injury of another person, or is in any way a participant in actions that result in the death or serious bodily injury of another person, the Commanding Officer of the Internal Affairs Section shall be notified immediately and cause the incident to be properly investigated, for internal considerations, to investigate whether or not the incident took place in conformance with Department policy and procedures.

.60 Bill of Rights

This Bill of Rights is established as official policy for Level Two investigations. Its terms are applicable to all subject employees of the Colorado Springs Police Department, both sworn and civilian.

Bill of Rights:

The accused employee shall be given a specific advisement of the charge(s) or complaint(s) under investigation.

The employee shall be entitled to be accompanied by one advisor, legal counsel or department employee during any interview, for the purpose of providing counsel or advice. The advisor shall be of the accused employee's own choosing, so long as that advisor is available to permit a timely investigation.

The interview may be recorded by the investigators. The employee has the right to record the interview with his/her own recorder.

No more than two investigators shall be present during the interview. The interview shall be conducted at a reasonable time. The interview shall be for a reasonable period of time, taking into consideration the gravity and complexity of the investigation. The employee shall be allowed to tend to personal physical necessities.

The questions shall be directly and narrowly related to the employee's official duties, fitness to perform same and department policies and procedures.

If an employee refuses to answer questions, the employee shall be advised by investigators that failure to answer questions will result in their dismissal from employment pursuant to the department's due process procedures. Any statements made may be used in a civil proceeding or disciplinary action. These statements may not be used in a criminal proceeding, to the extent required by law.

No charges may be sustained against a member solely on the results of a polygraph examination. There must be other corroborative evidence in conjunction with polygraph results before a charge can be sustained.

If at any time during questioning the employee becomes a suspect in a criminal act, the administrative questioning will end and the employee shall be informed of the Miranda warnings.

The employee shall be given an opportunity to respond to the complaint orally, and in writing, if she or he desires.

All complaints concerning an employee's misconduct shall be considered confidential to the extent permitted by law. Confidentiality is subject to the rules set forth by the Colorado Open Records Act C.R.S. 24-72-201 and the Criminal Justice Records Act C.R.S. 24-72-303.

The employee has the right to appeal disciplinary action in accordance with the Colorado Springs Police Department Operations Manual, Rules and Regulations of the City of Colorado Springs Civil Service Commission or Personnel Policies and Procedures Manual of the City of Colorado Springs, as appropriate.

Nothing of a derogatory nature may be placed in an employee's personnel file without notifying the employee in writing. All employees shall have the right to contest in writing the placement of derogatory information in those files.

.70 Attachments

[Garrity Advisement Form](#)