

Police Department Policy and Procedure Manual

Chapter 2 — Personnel

Section Number: 2-5-6
Section Title: Process and Procedures of a Formal Investigation
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I. Definitions

A. Informal inquiry

1. Any inquiry of an employee regarding an allegation of misconduct against that employee, prior to a formal investigation being ordered by the Chief of Police. The purpose of such inquiries is to mediate a citizen's complaint or discuss the facts to determine whether a formal investigation should be initiated.

B. Formal Investigation

1. The process of investigation of alleged misconduct if ordered by the Chief of Police. The investigation is intended to gather evidence of misconduct that appears to be serious. An accused employee must be advised in writing of the initiation of, and the nature of a formal investigation.

C. An Interview

1. The questioning of an employee pursuant to the formal investigation. The interview may be the basis for filing charges seeking a suspension, demotion or discharge.
 - a. The term does not include questioning (1) as part of an informal inquiry or (2) relating to minor infractions of Departmental rules that may be noted on the employee's record that are not apparently serious.

D. Administrative Action

1. Any action taken that is authorized to recommend, approve or order for the suspension, demotion or discharge of an employee.

II. Process and Procedures of a Formal Investigation

- A. The Chief of Police, or designee, shall be advised of a complaint against an employee of department, as soon as practical, but no later than 14 days following receipt of the complaint. Depending on the severity of the complaint, the Chief may be notified immediately by telephone or forwarded the complaint through the chain of command by utilizing the compliment/complaint form. The Chief will determine whether the allegation should be handled as an informal inquiry or a formal investigation.
- B. If it is determined by the Chief that the allegation should be handled by an informal inquiry, the affected employee's supervisor will handle the inquiry.
- C. Allegations in the nature of a serious complaint shall be assigned in the following manner
 1. The Chief of Police shall assign a Supervisor to investigate the allegation as soon as possible. The investigating Supervisor, whenever possible, will be of at least one rank above the department member being investigated. The Chief of Police may also notify the County Attorney's Office or another investigative agency if it is warranted.
 - a. The Supervisor assigned to investigate a complaint against a department member will:
 - (a) Assure the employee subjected to an interview is informed of the nature of the allegations and their rights and responsibilities.
 - (b) Whenever an employee is subjected to an interview within the scope of this section, the interview shall be conducted with the following considerations:
 - (i) All interviews shall be conducted at a reasonable time of day. Whenever the nature of the alleged incident and the work schedule allows, the interview shall be conducted when the affected member is normally scheduled to work.
 - (ii) Interview sessions shall be of reasonable duration and shall allow the employee interviewed reasonable periods of rest and for personal necessities.
 - (iii) The employee being interviewed shall not be subjected to professional or personal abuse, including offensive language.
 - (iv) A complete record of any interview shall be made, and a complete transcript or copy shall be made available to the employee under investigation without charge and without undue delay. Such record may be electronically recorded.

- (v) If the interview is to be taped, all parties will be advised.
 - (vi) All taped interviews shall be kept on file for a minimum of ninety (90) days after the final disposition of the case.
 - (c) No employee shall be interviewed without first being advised in writing that admissions made during the interview may be used as evidence of misconduct or as, the basis for charges seeking suspension, demotion, or discharge.
 - (d) Employees will also be advised in writing of the right to counsel of his choosing who may be present to advise him at any stage of any interview.
 - (e) He shall also be advised that having counsel present will not alleviate the member from being interviewed or of speaking in his/her own voice for him/herself, and that the employee has no right to refuse to answer questions specifically and narrowly related to the employee's duties.
 - (f) During the investigation a polygraph examination will not be administered, cause to be administered, threaten to be administered, or attempt to be administered to any employee unless a criminal investigation has been initiated.
 - (g) Contact all complainants and witnesses as soon as possible, attempting to ensure that complainants and witnesses are not unduly inconvenienced. After three days, if the effort to contact the complainant or witness is unsuccessful, the investigator will prepare and send a letter by certified mail to the person requesting that the investigator be contacted immediately. Attempts to contact the person, and the means of communication used (telephone, correspondence, personal visit) shall be documented in the final report of the investigation. The assigned investigator should conduct as complete an investigation as possible using all proper investigative procedures appropriate for his investigation.
 - (h) Take written statements from complainants and witnesses when necessary.
 - (i) Obtain authorization of the Chief of Police or his/her designee prior to interviewing the accused employee regarding an allegation of misconduct and the assigned interviewer must remain aware of the accused employee's rights, as defined by law.
2. The Chief of Police may require an employee to submit to any of the following tests or disclosures when the test or disclosure is specifically directed and narrowly related to a formal internal investigation regarding the employee. Failure to follow a direct order of this nature may result in a separate disciplinary action against the employee.
- a. Medical or laboratory examination including chemical tests.
 - b. Photographs of the employee.

- c. Participation in a line-up.
 - d. Financial disclosure statements by the employee.
3. The rights of employees in disciplinary procedures set forth by this section shall not diminish the employee's rights guaranteed to all citizens by the Constitution and laws of the United States and of the State of Iowa.
 4. During the investigation into the alleged misconduct, the investigator will ensure that his/her conduct and that of anyone under his/her command will be of the highest standards. At no time will the rights, either civil or administrative, of the accused or any citizen be violated.
 5. When allegations appear likely to result in an administrative action, but are not likely to result in criminal prosecution, the investigator should take the following action prior to employee interview:
 - a. Have the accused department employee read and sign a copy of the Personnel Complaint Form.
 - b. Give the employee the "Garrity Rights Advisory."
 - (a) The law provides that you are to be advised of the following:
 - (b) Any admission made in the course of this hearing, interrogation or examination may be used as the basis for evidence of misconduct or policy violation(s) or as, the basis for charges seeking suspension, suspension without pay demotion or discharge.
 - (c) You have the right to counsel of your choosing to be present with you to advise you at this hearing, interrogation or examination and you may consult with him/her as you desire.
 - (d) You have a right to be given a reasonable time to obtain counsel of your own choosing.
 - (e) You have no right to remain silent. You have an obligation to truthfully answer questions put to you. You are advised that your statements or responses constitute an official, internal police department report.
 - (f) If you refuse to answer questions put to you, you will be ordered by a superior officer to answer the question.
 - (g) If you persist in your refusal after the order has been given to you, you are advised that such refusal constitutes a separate violation of the Rules and Regulations of the Clive Police Department.
 - (h) You are further advised that by law any admission made by you during the course of this hearing, interrogation or examination cannot be used against you in a subsequent criminal proceeding.

6. When it appears the allegations may involve possible criminal matters, the investigator should take the following action prior to an interview with the affected employee:
 - a. Receive authorization to interview from the Chief of Police.
 - b. Have the accused department employee read and sign a copy of the Personnel Complaint form.
 - c. Under the circumstances in which an employee of the Department is questioned about matters that potentially could result in criminal prosecution against him/her, and no decision has been made whether to use the member's testimony against him/her in any subsequent criminal prosecution, the member shall not be compelled to make statements that might be self-incriminating, and he/she may not be disciplined for invoking his rights against self-incrimination. In such cases, the "Miranda Warning" shall be given.
 - (a) Miranda Warning - "First, you have the right to remain silent. You are not required to say anything at any time or to answer questions. Anything you say can be used against you in a court of law. Second, you have the right to talk to a lawyer for advice before making a statement or answering any questions, and you may have a lawyer present with you during questioning if you wish. If you do want a lawyer but cannot afford one, a lawyer will be provided for you. If you want to answer questions without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer. Third, even though you are an employee of the Clive Police Department and ordinarily you would be required by regulations to answer questions put forth to you by a superior officer regarding your official duties, in this instance those regulations do not apply, and you will not be required to answer. If you do not wish to answer any of these questions, your refusal to answer alone will not subject you to disciplinary action by the Police Department."
7. Under circumstances in which an employee of the Department is questioned about possible criminal matters and it has been determined that any self-incriminating statements the member makes will not be used against him/her in criminal prosecution, the member may be ordered to answer questions, and he/she be disciplined if he/she refuses to answer fully and truthfully. In such cases, the "Garrity Rights Advisory" shall be given.

8. When either the Miranda Warning or Garrity Rights Advisory is given, a written record shall be kept of which warning was given, and witnesses who were present.



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