



CONCORD POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

PERSONNEL INVESTIGATIONS AND DISCIPLINE

GENERAL ORDER: 03.04

CREATED: September 24, 2001

ISSUED: October 13, 2020

CALEA STANDARD: 26.1.4, 26.2.1, 26.3.3

EFFECTIVE DATE: October 20, 2020

ACTION: Amends revision dated December 27, 2016.

03.04.0 **PURPOSE**

The purpose of this standard operating procedure is to communicate the proper procedures to follow regarding personnel investigations. It is important to distinguish a personnel investigation, which is an administrative inquiry, from a criminal investigation.

03.04.01 **POLICY**

The Concord Police Department takes seriously all complaints regarding the service it provides and the conduct of its coworkers. The department will accept and address all complaints of misconduct in accordance with this general order, and applicable federal, state, and local law. It is also the policy of this department to ensure that its coworkers and the community can report misconduct without concern for reprisal or retaliation.

03.04.02 **DEFINITIONS**

A. ANONYMOUS COMPLAINT

A citizen or internally generated complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

B. CITIZEN COMPLAINT

A citizen complaint (or externally generated complaint) is an allegation of a Code of Conduct, standard operating procedure, or criminal violation committed by one or more coworkers. A citizen complaint can be made either orally or in writing, provided that the complainant is an adult, parent or legal guardian of a juvenile complainant, attorney representing an aggrieved party, a translator representing a non-English speaking complainant, or a person representing a mentally and/or physically challenged complainant. A citizen complaint shall be documented in writing on a Citizen Complaint Report (Form PI-1) by either the complainant or supervisor receiving the complaint. Subsequent investigation shall be documented on department letterhead.

C. INTERNALLY GENERATED COMPLAINT

An internally generated complaint is an allegation of a Code of Conduct or standard operating procedure violation committed by one or more coworkers. An internally generated complaint can be made by any coworker. Internally generated complaints can be made either orally (to a supervisor) or in writing; however, a complaint alleging misconduct on the part of a captain or higher rank shall be made in writing to the Chief of Police. An internally generated complaint may be initiated by a supervisor based upon personal observation of misconduct or hearsay information that alleges misconduct. An internally generated complaint shall be documented in writing on a department memorandum. Subsequent investigation shall also be documented on department letterhead.

D. PRELIMINARY INVESTIGATION

A preliminary investigation occurs whenever a supervisor receives/accepts a citizen complaint or internally generated complaint from the complainant. The supervisor who receives/accepts a complaint is the person who conducts the preliminary investigation, prior to submitting the complaint to their commanding officer. The preliminary investigation includes, but is not limited to: review of complaint, obtaining supporting documents or evidence, conducting initial interview of complainant.

E. INITIATION REPORT

An initiation report communicates the investigating supervisor's understanding of the complaint allegation(s), the identification of the accused coworker(s), and potential procedure violation(s) based upon that supervisor's initial review of the complaint and any other information provided by the preliminary investigation. The outcome of a completed personnel investigation may differ from the violation(s) identified in the initiation report. Such differences do not make the initiation report inaccurate; therefore, investigating supervisors shall not alter the content of an initiation report.

03.04.03 RECEIPT OF CITIZEN COMPLAINT

- A. Citizens who wish to express dissatisfaction, due to the acts or omissions of one or more coworkers, or due to department policies/procedures, shall be immediately referred to a supervisor. Non-supervisory coworkers shall in no way attempt to deter a citizen from making a complaint and are prohibited from questioning citizens as to the nature of the complaint. If the complaint relates to a coworker of another work location (i.e., a citizen complains to a Baker District sergeant about an interaction with a David District officer), the complaint shall be accepted without referring the complainant to that work location.
- B. A PI-1 may be completed by the supervisor receiving the complaint. However, when more convenient for the complainant, the form may be completed by the complainant and returned to the department, either in person or by mail. Request that the complainant sign the report, unless the complaint is received by mail. A citizen's refusal to sign the PI-1 shall not constitute a basis for refusing to accept a complaint.
- C. Whenever a citizen requests a PI-1, the coworker to whom such request is made shall provide the citizen with the report form.

- D. Whenever a citizen communicates dissatisfaction with one or more coworkers, and the complaint does not rise to the level of a Code of Conduct or standard operating procedure violation, a PI-1 shall not normally be completed. However, when in doubt as to whether a violation has occurred or whenever a citizen is adamant that a complaint be filed, the supervisor shall document the citizen's statements on a PI-1 and follow the procedures set forth below.
- E. Citizen complaints shall be accepted from agents representing an aggrieved party. Said agents shall be limited to the following:
1. An attorney representing the complainant.
 2. The parent or guardian of a minor child.
 3. A translator representing a non-English speaking complainant.
 4. A representative of a mentally and/or physically challenged complainant.
- Note: In other cases that do not meet the above criteria, the representative shall be given a PI-1 and advised to have the proper complaining party proceed in submitting the complaint.**
- F. A supervisor completing or receiving a PI-1 shall provide the complainant with a copy of the report, unless the complaint is received by mail, or is made anonymously.
- G. The citizen complaint shall be treated as confidential and the contents disclosed only as necessary for investigation.
- H. All citizen complaints shall be reviewed by the chief of police or designee to determine if the complaint will be investigated by a supervisor at the work location referenced in the complaint or an investigator assigned elsewhere in the department.

03.04.04 RECEIPT OF INTERNALLY GENERATED COMPLAINT

- A. Whenever a coworker reports alleged misconduct by another coworker to a supervisor, that supervisor shall document the allegation in writing on a department memorandum.
- B. The supervisor may request that the complaining coworker, if known, also document the matter in writing (if the complaint is made orally), however, such written documentation shall not be required unless so ordered by the chief of police.
- C. A supervisor who accepts an internally generated complaint shall consult with his/her commanding officer prior to initiating an administrative personnel investigation.
- D. Command staff may determine the best course of action for lower level allegations. However, for allegations that may result in disciplinary action, command staff will advise the chief of police and seek guidance before proceeding with an administrative personnel investigation.
- E. The internally generated complaint shall be treated as confidential and the contents disclosed only as necessary for investigation.

03.04.05 PRELIMINARY INVESTIGATION PROCEDURES

Whenever a supervisor receives/accepts a citizen complaint, or an internally generated complaint, the supervisor shall conduct a preliminary investigation as follows:

1. Record the interview with the citizen or department complainant to obtain enough details in which to summarize and reduce the complaint to writing.
2. Review any reports or evidence submitted by the complainant.
3. Attempt to identify citizen witnesses to the alleged misconduct.
4. Attempt to identify coworkers that are either witnesses to the alleged misconduct or are the target of the complaint itself.
5. Determine if the allegation(s) is criminal, or a violation of the Code of Conduct or standard operating procedures.
6. If the complaint is criminal in nature, consult your commanding officer for guidance on how to proceed.
7. Obtain relevant supporting documents or evidence (that which can assist in either proving or disproving an allegation of misconduct) such as a CAD printout, audio or video recording or photographs.
8. Document the complaint in writing. This documentation shall include reference to any documents or evidence obtained, any citizen and/or coworker witnesses identified, and any coworker(s) identified as a target of the complaint.
9. Promptly forward all documents, reports, and evidence to your commanding officer.

03.04.06 INVESTIGATION PROCEDURES**A. CITIZEN COMPLAINT CONTACT**

1. Whenever a command officer assigns a personnel investigation to a subordinate supervisor and there is a named citizen complainant, the investigating supervisor shall contact that complainant within 3 days of receiving the investigation. The investigating supervisor shall provide the citizen complainant with his or her name and work location telephone number, and the supervisor shall document the date and time of this contact in his or her investigative summary report. The investigating supervisor shall also provide the complainant with periodic progress updates.
2. If the investigating supervisor is unable to contact the citizen complainant in the time allotted, he or she shall consult with their commanding officer for further direction. In this circumstance, it may be necessary for the office of the chief of police to send a letter to the complainant's last known address requesting that the complainant contact the investigating supervisor.

B. INITIATION REPORT

The supervisor assigned to conduct a personnel investigation shall complete an initiation report as soon after being assigned the investigation as possible. Based upon a thorough review of the investigative file, the initiation report shall contain the following three (3) sections:

1. "On (date/time), I (investigating supervisor) was instructed by (initiating authority) to initiate an investigation regarding an allegation of misconduct on the part of (identify coworker)."
2. The second section shall include a concise statement of the alleged misconduct.
3. The third section shall state the following:

"If sustained, this allegation of misconduct is a violation of [cite the specific rule or standard operating procedure, including the specific section] which states in part: [record only that portion of the rule or standard operating procedure found to be in violation]."

C. PRE-INTERVIEW PROCEDURES

Prior to conducting an investigatory interview of an accused coworker, the investigating supervisor shall comply with the following requirements:

1. Review the investigative file, including any documents or evidence provided by the complainant and the preliminary investigation.
2. Collect and review any documentation or evidence relating to the allegation(s) that was not provided by the preliminary investigation but, nonetheless, is needed in order to conduct the investigation.
3. Identify and interview any citizen witness to the alleged misconduct.
4. Identify and interview any coworker **witnesses** to the alleged misconduct **who are not a target of the investigation**. If in doubt as to whether a coworker should be interviewed in a compelled fashion, consult your commanding officer or higher authority. Coworker witnesses who must be interviewed, and who are not the target of misconduct, are not allowed to have representation as an accused coworker would. Such witness interviews shall be audio recorded. However, such coworkers are required to be truthful, candid, and forthcoming with information. A coworker witness who fails to be truthful, candid, and forthcoming may be subject to disciplinary action.
5. Prepare for the interview of the accused coworker(s) by formulating and drafting questions to ask the accused. The investigating supervisor shall ensure that he/she is adequately prepared to conduct the interview reasonably in advance of actually conducting the interview.

6. Whenever scheduling conflicts occur between the investigating supervisor and an accused coworker, and in order to expedite the completion of the investigation, the investigating supervisor may with the approval of his/her commanding officer prepare interview questions in writing and delegate the interview to another supervisor. In this instance, the investigating supervisor shall be responsible for summarizing the interview in writing based upon a review of the audio recording.

D. NOTICE OF PERSONNEL INVESTIGATION MEMORANDUM

If a coworker is under investigation for an alleged violation of the Code of Conduct or standard operating procedure and is subject to a compelled interview for any reason, which could lead to disciplinary action, such interview shall comply with the following requirements:

1. The supervisor assigned to conduct a personnel investigation shall, prior to obtaining any information from an accused coworker (the target of the investigation), inform the accused coworker in a timely manner that the matter is an administrative personnel investigation and NOT a criminal investigation.
2. If there is any possibility that the matter being investigated could result in a criminal proceeding, the investigating supervisor shall advise the accused coworker that: *"This is an administrative personnel investigation. The answers you give and the fruits thereof, cannot be used against you in any criminal proceeding."*
3. Prior to conducting an interview that requires an accused coworker to provide oral statements, the investigating supervisor shall complete the *Notice of Personnel Investigation* memorandum (Form PI-2).

Note: A PI-2 shall be issued for each subsequent oral statement obtained from the same coworker.

4. The supervisor shall request that the coworker sign the memorandum. If the coworker refuses to sign the memorandum, the supervisor shall place the word "refused" on the signature line.
5. The original memorandum shall become a part of the investigative file. A copy shall be given to the coworker.
6. The coworker under investigation shall be informed of the nature of the investigation prior to any interview by including a brief synopsis of the allegation(s) on the memorandum. Enough information shall be included so that the coworker is able to prepare for the interview.
7. If a proper investigation is dependent upon the coworker providing information such as memorandum book entries or field/case notes, then the coworker shall be ordered to bring that information to the interview. This order shall be made in writing on the memorandum.
8. Prior to any interview, the investigating supervisor shall advise the coworker that: ***"Refusal to respond during this investigation, or any untruthful response, may result in discipline up to and including dismissal from the Concord Police Department. A lack of candor, such as an omission of detail to give a false impression, shall be regarded the same as untruthfulness."***

9. The investigating supervisor shall record on the memorandum a date, time, and location that the oral interview will take place. Interviews should be scheduled with enough advance notice to allow a coworker time to prepare and/or retain a representative. The coworker may request an earlier interview provided that the coworker has an opportunity to obtain appropriate representation for the interview and provided the supervisor is adequately prepared to conduct the interview.
10. Whenever a coworker chooses to participate in an interview either without representation present or less than 24-hours after the notice memorandum was issued, the investigating supervisor and coworker shall verbally confirm such agreement at the start of the recorded interview.
11. If, for whatever reason, a scheduled interview has to be rescheduled to a different time or date, it is not necessary to re-issue a notice memorandum. The investigating supervisor shall note the revised schedule on the original memorandum and place his/her initials next to the revision. Further, the rescheduled interview shall take place as soon as practicable, provided the accused coworker has a reasonable opportunity to obtain the presence of and/or to consult with a representative of his/her choice before and/or during the interview.

E. INTERVIEW PROCEDURES (OBTAINING ORAL STATEMENTS)

Unless otherwise directed by the chief of police, oral statements shall be obtained from coworkers who are subject to personnel investigations. All interviews will be conducted while the coworker is on duty, unless the seriousness of the offense or other exigency requires an immediate interview. The following procedures shall be followed when oral statements are obtained:

1. An accused coworker may have a representative of his/her choice present during an interview.
2. Only a supervisor shall obtain oral statements. A second supervisor shall be present at all times during the interview, however only the interviewing supervisor shall direct questions to the accused coworker during the recorded portion(s) of the interview.
3. The supervisor shall use a digital audio recorder provided by the department.
4. The supervisor obtaining an oral statement shall inform the accused coworker that the statement is being recorded and the digital audio recorder shall be in plain view.
5. Follow the procedures outlined in the *Guidelines for Oral Interviews* form (Form PI-3).
6. All interviews should be for a reasonable period of time and the coworker's personal needs should be accommodated.
7. No coworker should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain a response.

8. Ensure that each question that is asked of an accused coworker is adequately answered. For example, a supervisor may ask a coworker a question, however the coworker's response may not actually provide the information sought by the question. It is incumbent upon the supervisor to repeat or, in the case of a misunderstanding of the original question, to rephrase until the question is adequately answered.

Note: These matters are not of a criminal nature; therefore, investigating supervisors shall not advise coworkers of their constitutional (Miranda) rights.

F. TRANSFER OF DIGITAL AUDIO FROM RECORDER TO COMPACT DISC

1. At the conclusion of an interview, the interviewing supervisor shall transfer the audio content of the interview from the digital audio recorder to two (2) compact discs.
2. After the data transfer, the supervisor shall ensure that the audio content of the interview was successfully downloaded to each of the compact discs.
3. Prior to disconnecting the digital audio recorder from the computer and after ensuring the successful transfer of data, the supervisor shall delete the interview from the recorder.
4. The supervisor shall provide one (1) compact disc to the coworker.
5. The supervisor shall label the investigative file copy of the compact disc by using permanent marker to include the following information:
 - a. Case or file number, if applicable;
 - b. Date/time of the interview;
 - c. Rank/title and name of the coworker interviewed;
 - d. Rank/title and name of the interviewing supervisor.
6. The investigative file copy of the interview shall be stored in a compact disc sleeve to prevent damage to the disc.

G. INVESTIGATOR'S SUMMARY REPORT

The investigating supervisor shall prepare a summary report on department letterhead, which shall include the following sections:

1. The initiating section shall be formatted to state the following: "On (date), I (primary investigator) was instructed by (initiating authority) to investigate an allegation(s) of misconduct on the part of (coworker) assigned to (current work location)."
2. The allegation section shall include a concise statement describing the allegation of misconduct, including the date, time and location of the offense.

3. The investigation section shall include a detailed, sequential/chronological narrative that summarizes the investigation. As part of an investigative summary, all information contained within this section must be supported by other documents/evidence within the investigative file. For example, if in the summary report, an investigator references a statement made by a witness when interviewed, then a detailed narrative of that interview should be contained within the investigative file under a separate report. Additionally, if an investigator makes reference to facts contained in a document, then that document or a copy of that document should be included within the investigative file. Recorded oral interviews do not need to be transcribed or reduced to writing on a report other than the investigator's summary report since the audio recording serves as evidence of the information obtained from the interview.

Note: Report the facts and avoid expressing personal opinions.

H. COMMANDING OFFICER'S SUMMARY REPORT

Upon completion of a personnel investigation, the commanding officer shall submit a summary report on department letterhead. The commanding officer's summary report shall, if applicable, cite Code of Conduct or standard operating procedure violations with a brief statement on how each was violated. Commanding officers shall state their conclusion(s) at the end of their summary with any one or combination of the following dispositions:

1. Sustained: There is sufficient evidence to prove either the allegation(s) made in the complaint, or the allegation(s) identified through subsequent investigation. If sustained, the specific violation shall be cited.
2. Not Sustained: There is insufficient evidence either to prove or disprove the allegation(s).
3. Exonerated: The incident as alleged occurred, however the coworker's actions were lawful and proper.
4. Unfounded: The allegation(s) is false or not factual.

Note: A combination of dispositions may be used when multiple allegations exist within the same complaint.

I. EXECUTIVE OFFICER REVIEW

1. The bureau commander shall:
 - a. Review the investigative reports and all other documents relating to the investigation; and
 - b. Approve the findings. If findings are approved or sustained, the following actions may be recommended to the chief of police:
 - i. Policy review or remedial training
 - ii. Official reprimand (written or verbal)

- iii. Suspension without pay (and number of days)
 - iv. Suspension from off-duty employment (and number of days)
 - v. Probation (if appropriate)
 - vi. Demotion
 - vii. Dismissal from the department
- c. Disapprove the findings. If findings are disapproved, he/she may:
- i. Direct that further investigation be conducted
 - ii. Present the findings to the chief of police for final disposition

Note: The bureau commander may request that the investigation be conducted by a designee of the chief of police. This may be done due to the extenuating circumstances, seriousness of the allegation, numerous witnesses, time consuming investigation, or any reason he/she feels would hinder the investigation.

2. The chief of police shall review the investigative reports and all other documents relating to the investigation. Once the chief of police is satisfied that no further investigation or action is required, the chief of police shall determine the type and amount of discipline, if any, that should be imposed.

J. REPORTING TIMEFRAMES

Internal investigations should be completed as soon as practicable, generally within 30 days of assignment. The chief of police may grant extensions when extenuating circumstances exist.

03.04.07 STIPULATION

For a non-criminal allegation in which a preponderance of evidence of guilt already exists, the chief of police may allow a coworker to stipulate to the allegation in lieu of an administrative personnel investigation. In such cases the chief of police or designee will supply the coworker with a stipulation agreement (Form PI-4). The coworker can: 1) stipulate to the allegation, 2) stipulate to the allegation and provide a written response, or 3) decline to stipulate to the allegation and request a personnel investigation. Additional instructions will be included to assist the coworker in making a decision.

03.04.08 RMS COMPLAINT MODULE

In situations where a citizen expresses dissatisfaction with the service they received; there is no allegation of misconduct; and the citizen is not adamant about filing an official complaint, the coworker's commanding officer (lieutenant or higher) shall enter the relevant information into the RMS complaint module and track the incident through the appropriate chain of command. Sergeants, who are likely to encounter and handle such low level complaints, shall summarize the incident in writing (memorandum or email) and submit same to their commanding officer for entry into RMS.

Note: Repetitive service complaints may warrant a personnel investigation or PI-4 as determined by the chief of police.

03.04.09 REPORT ROUTING AND RETENTION

- A. Personnel investigation files are strictly confidential. No copies are to be made of any personnel investigation (documents or evidence such as audio or video recordings, for example) without authorization from the chief of police.
- B. When a personnel investigation has been completed, all documents and evidence relating to the investigation shall be forwarded to the chief of police through the proper chain of command.
- C. The office of the chief of police shall serve as the central repository for all personnel investigation files. In addition to the hard copy file, a digital file shall be entered into the records management system (IA module) for redundancy and for purposes of complaint history tracking.
- D. Personnel investigation files shall be retained in accordance with the existing retention schedule for such files.

03.04.10 CRIMINAL INVESTIGATION PROCEDURES

A criminal investigation concerning a police department or other city coworker shall be investigated by a designee of the chief of police, which may include an outside law enforcement agency. It is understood that officers may get called to or happen upon the scene of a crime where a department or city coworker is suspected of criminal activity. The initial investigation should be conducted no differently than that of a similar situation not involving a department or city coworker. However, prompt notification to the appropriate bureau commander and chief of police must occur so that a determination on next steps can be made.

03.04.11 PUNITIVE DISCIPLINARY ACTION

- A. Disciplinary action may take any of the following forms or combinations and are not necessarily restricted to the order set forth below. Also note this list is a representation of common disciplinary actions and does not contain all actions the department may utilize.

1. Verbal Reprimand
2. Written Reprimand
3. Suspension Without Pay
4. Withholding of Step or Merit Pay Increase
5. Administrative Decrease
6. Demotion
7. Dismissal
8. Restitution

NOTE: For additional information, refer to section 8.3 of the City of Concord Personnel Policy.

03.04.12 NON-DISCIPLINARY ACTIONS

A. Non-disciplinary action may take any of the following forms or combinations and are not necessarily restricted to the order set forth below. Also note this list is a representation of common non-disciplinary actions and does not contain all actions the department may utilize.

1. Policy Review
2. Remedial Training
3. Corrective Counseling

NOTE: These non-disciplinary actions may be used as a function of discipline. The chief of police may direct one or more actions to reinforce a coworker's job skill when it has been determined substandard performance is the result of inadequate training or job knowledge, or unfamiliarity with policy or procedure.

03.04.13 NOTICE OF DISPOSITION

The chief of police shall provide coworkers with a notice of disposition as soon as administratively possible after the investigation has been closed, regardless of the outcome. Coworkers shall review and sign the original notice, which will be included within the investigative file. Coworkers will be provided with a copy of the signed notice for their own records.

03.04.14 GRIEVANCE PROCEDURES

Permanent coworkers are subject to the City of Concord grievance procedure set forth in Article 8.4 of the City of Concord Personnel Policy.

03.04.15 TEMPORARY RELIEF FROM DUTY

- A. A supervisor may temporarily relieve from duty a coworker under his/her supervision for a period of not more than one (1) work day on the grounds the coworker is unfit for duty. Unfit for duty may include any physical or mental condition or Code of Conduct violation which might, in the judgement of the supervisor, render the coworker incapable of adequately performing his/her duties in such a way as to embarrass or discredit the department or jeopardize the safety of any person or property.
- B. The suspending supervisor shall immediately notify his/her commanding officer of the action taken and the reasons for doing so. Notification will also be made to the appropriate bureau commander, deputy police chief, and chief of police as soon as administratively possible.
- C. Action taken under this section will not prohibit subsequently more severe disciplinary action.
- D. Administrative Relief from Duty

The chief of police may place a coworker, against whom a complaint has been filed or about whom an investigation is pending, on administrative leave with or without pay, depending upon the circumstances.



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CHIEF OF POLICE