


# Fort Collins Police Services

## Policy Manual

 <b>FORT COLLINS POLICE</b>	<b>POLICY</b>	<b>1020</b>
	<b>TITLE</b>	Administrative Investigations

### 1020.1 PURPOSE AND SCOPE

The Agency is committed to high ethical standards. We are an integral part of the community, and the Agency exists to serve all members of it. The people entrust us with considerable authority, and we must be responsive to their concerns.

This policy establishes the procedures to be used in administrative investigations of Agency employees to ensure fair treatment of complaining parties, witnesses, and employees. Another purpose of this policy is to establish certain guidelines for criminal investigations of Agency employees and to delineate the differences between, and the separation of, administrative and criminal investigations of Agency employees. It is not the intent of this policy to discourage legitimate complaints.

This policy applies to all administrative and criminal investigations of alleged misconduct by Agency employees or authorized volunteers, regardless of the origin of the complaint.

### 1020.2 TYPES OF INVESTIGATIONS

Personnel complaints consisting of any allegation of misconduct or improper job performance against any Agency employee that, if true, would constitute a violation of Agency policy, City policy, federal, state, or local law. These complaints may be generated internally or by the public.

These administrative investigations shall be classified in one of the following categories:

- (a) Performance Complaint
- (b) Level One Investigation
- (c) Level Two Investigation

### 1020.3 AVAILABILITY OF COMPLAINT FORMS

Complaint packets will be maintained in the Agency headquarters' public lobby and on the Agency's website. The Agency provides complaint packets in languages other than English as necessary and practicable.

Agency supervisors who receive comments or complaints about the complaint process shall forward that information to the Professional Standards Unit Lieutenant for process review and improvement.

### 1020.4 SOURCE OF COMPLAINTS

- (a) Any person who believes that an Agency employee engaged in improper conduct has the right to make a complaint. Agency employees must report inappropriate behavior of other

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employees, including unreasonable or unnecessary use of force, violations of federal, state, or local law, and Agency policy. The Agency will effectively investigate all complaints in a timely and impartial manner and take appropriate action according to law and policy.

- (b) Anonymous complaints and third-party complaints should be accepted and investigated to the extent that sufficient information exists.
- (c) All complaints filed against an Agency employee will be entered in the Internal Affairs Case Management System (IACMS) by an FCPS supervisor.
  - 1. The IACMS is in a secure area of the FCPS headquarters building and managed by the Internal Affairs (IA) Unit. Access is limited to certain FCPS employees, and all entries are tracked by name, date, and time. This system is separate from the Agency's central records and personnel system.

### **1020.5 ACCEPTANCE OF COMPLAINTS**

IA or the employee's supervisor will screen all allegations of employee misconduct and enter the complaint into IACMS. Entries will include citizens' complaints about employee behavior and minor violations of procedure or practice. An inquiry about an Agency employee's actions is not a complaint unless that person states it as such or is not satisfied with the supervisor's explanation and requests further action. Inquiries not rising to the level of a complaint shall be documented in an Informational entry in IACMS.

- (a) Additional information about accepting complaints:
  - 1. Any Agency employee will courteously receive complaint packets and promptly forward them to IA (Level II and possibly Level I) or the subject employee's supervisor (Performance Complaints and possibly Level I).
  - 2. Complaints are accepted in any form, although written complaints are preferred.
  - 3. Employees taking complaints will forward the complainant's contact information to the appropriate supervisor or IA, if the supervisor is not immediately available to speak with the complainant.
  - 4. The supervisor will make every effort to audio or audio/video record the complaint.
- (b) Supervisors taking complaints should consider the following:
  - 1. The judicial system will settle differences of opinion concerning the citizen's guilt or innocence for a crime, including decisions to issue traffic or other citations. Supervisors will only enter complaints of employee conduct and violations of law or policy into IACMS.
  - 2. Supervisors will collect the complainant's contact information and provide instructions on later filing a complaint to chemically impaired complainants.
    - (a) Supervisors will take complaints from chemically impaired complainants who insist on having their complaint filed immediately. The supervisor will re-contact the complainant to validate their complaint by the supervisor's next workday.
    - (b) The supervisor may disregard the complaint only if the complainant refuses to cooperate and when no violation of law or policy is apparent.
    - (c) The complainant can file their complaint in the future regardless of their initial cooperation.
  - 3. Supervisors should generally only take complaints from juveniles with a parent or guardian present and after the parent/guardian is informed of the circumstances.

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4. Allegations made against an employee are sometimes immediately proven not to be credible (i.e., through video recording). In these circumstances, the employee's immediate supervisor can investigate the allegation as a Performance Complaint regardless of the allegations. The employee's supervisor must adequately document in IACMS why the allegation was not credible and include evidence such as a recording.
5. Complainants may rescind their complaints. The Agency will only disregard the complaint if there is no concern about a law or policy violation. The investigating supervisor or IA must adequately document the complaint and subsequent rescinding statements. If it was a Level I or Level II complaint, the investigator might reclassify it as a Performance Complaint. A finding of unfounded is appropriate in this circumstance. Alternatively, a rescinded complaint may be classified or reclassified as an Informational entry in IACMS.

#### **1020.6 COMPLAINING PARTY RIGHTS AND RESPONSIBILITIES IN AN ADMINISTRATIVE INVESTIGATION**

Individuals wishing to comment or complain about the conduct of Agency employees will be treated with respect and professionalism.

- (a) The complainant shall have the right to have one representative of their choice present while being interviewed during an administrative investigation.
- (b) The representative is limited to that of an advisor to the complainant and is not a participant in the questioning and investigation.
- (c) Administrative investigators shall schedule complainant interviews at the convenience of both the Agency and the complainant, not at the complainant's representative's convenience.
- (d) Administrative investigators shall conduct interviews at a reasonable hour unless the seriousness of the investigation requires immediate action.
- (e) The duration of an administrative interview of a complainant shall be reasonable and allow for adequate personal necessities and rest periods.
- (f) The Agency shall notify the complainant of the findings of an administrative investigation.
- (g) Per City Charter, a complainant has the right to request a review of the Agency findings by the Citizen Review Board if the CRB has not already reviewed the case. The citizen must request the review in writing directly to the CRB within one year of the incident.
- (h) IA will classify written complaints directly submitted to the CRB as at least a Level I investigation.

#### **1020.7 INITIAL SUPERVISOR RESPONSIBILITIES**

Supervisors who become aware of alleged misconduct or receive a citizen complaint shall take reasonable steps to mitigate the situation.

The supervisor shall be responsible for the following:

- (a) If the complaint involves serious allegations, the supervisor shall notify the employee's chain of command as soon as practicable. The Division head, their designee, or the highest-

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ranking employee notified is responsible for informing the Professional Standards Lieutenant as quickly as possible.

- (b) During the preliminary investigation of any complaint, the supervisor should make every reasonable effort to obtain names, addresses, and telephone numbers of any potential witnesses.
- (c) When appropriate, ensure the complainant receives medical attention.
- (d) The supervisor will take photographs of alleged injuries or damages and accessible areas of non-injury.
- (e) If reducing a complaint to writing will jeopardize the investigation or compromise complainant confidentiality, the complainant can report orally, but the receiving supervisor will make every effort to audio or audio/video record the statement. The employee receiving the report will tell the employee's Deputy Chief, Director, assistant chief, or the Chief of Police, who will initiate appropriate action.
- (f) A supervisor conducting an administrative investigation shall protect the employee's procedural rights according to policy, the Collective Bargaining Agreement (if applicable), and state and federal law.
- (g) Employees will immediately forward complaints related to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination to the involved employee's chain of command and Internal Affairs. IA will consult with the Deputy Chief of Police to consider assigning the complaint to the City Manager's Office independent investigator.

#### **1020.8 ADMINISTRATIVE VS. CRIMINAL INVESTIGATIONS**

Employees may be the subject of both administrative and criminal investigations to determine the factual basis of any complaint. This Agency will distinguish between administrative and criminal investigations to protect the rights of employees.

- (a) The purpose of an administrative investigation is to determine violations of any City or Agency rule, regulation, policy, procedure, or department training directive.
- (b) Administrative investigations of Agency employees will follow this policy, except as outlined elsewhere in this manual.
- (c) The purpose of a criminal investigation is to determine if alleged misconduct may be the basis for filing criminal charges. The Chief, or their designee, has the authority to order a criminal investigation. A criminal investigation can be in addition to an administrative investigation.
  - 1. This Agency will conduct criminal investigations of Agency employees per Colorado law and applicable provisions of this policy.
  - 2. The Chief may request an outside law enforcement or prosecutorial agency to investigate the alleged criminal wrongdoing by an Agency employee.

#### **1020.9 INVESTIGATIVE AUTHORITY**

The purpose of this section is to outline the authority to investigate the conduct of Agency employees.

- (a) The Chief of Police or their designee has primary authority to conduct all administrative and criminal investigations of Agency employees or cause them to be conducted.

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- (b) Per City policy, Police Services will refer all allegations of sexual harassment and employment related discrimination or retaliation that are generated from allegations of conduct occurring within the City organization to the City's Equal Opportunity and Compliance Manager.
- (c) The Chief or City Manager may request and authorize the City's Human Resources Department to conduct an administrative investigation.
- (d) The Chief of Police delegates the authority to IA to direct administrative investigations.
  - 1. The IA Sergeant has the authority to report directly to the Chief of Police regarding all information pertinent to an administrative investigation.
  - 2. IA requires all employees to fully disclose the commission of, or omission of, any act that might conflict with theirs and others' duties and obligations as employees.
- (e) The Chief, the Deputy Chief, an assistant chief, or the Director may direct any supervisor to conduct an administrative investigation. However, anyone performing administrative investigations must have completed an administrative investigation training course (acceptable to IA) within five years of the assignment.
  - 1. Supervisors conducting administrative investigations have the same authority as IA while fulfilling that assignment.
- (f) The Chief, the Deputy Chief, or an assistant chief may direct or authorize any sworn person to conduct a criminal investigation. However, anyone performing a criminal investigation must be a certified Peace Officer as defined by Colorado Revised Statutes.

#### **1020.10 ASSIGNMENT TO PAID ADMINISTRATIVE LEAVE**

Employees may be required by the City to go on paid administrative leave at any time with, or without, cause or warning at the City's sole discretion. The affected employee shall receive written notice of administrative leave. Circumstances that may result in paid administrative leave include, but are not limited to, the following:

- (a) To make inquiries into or investigate a work-related matter;
- (b) To remove the employee from the workplace pending a pre-decision hearing or final decision;
- (c) To protect the employee;
- (d) To protect the public;
- (e) To protect the other employees or property in the workplace; or
- (f) To further any other work-related or business-related purpose.

##### **1020.10.1 ADMINISTRATIVE LEAVE**

Unless otherwise stated in the Collective Bargaining Agreement, an employee placed on administrative leave will be subject to the following:

- (a) City Personnel Policies and Procedures and any collective bargaining agreement (if applicable) dictate if the leave will be paid or unpaid.
- (b) An employee placed on administrative leave may be required by a supervisor to relinquish any Agency equipment or vehicle as deemed appropriate by the Chief of Police, the Deputy Chief of Police, an assistant chief, or the Director.

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- (c) An employee placed on administrative leave shall not take any actions as an Agency employee or in an official capacity without the prior approval of the Chief or their designee, the Deputy Chief of Police, an assistant chief, or the Director.
- (d) The employee shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (e) An employee placed on administrative leave may be temporarily reassigned to a different assignment, generally within normal business hours, during the pendency of the investigation.
- (f) The employee must remain available for contact during the assigned working hours.
- (g) When an employee on administrative leave returns to full and regular duty, the employee shall be returned to their regular duty assignment unless otherwise directed by the Chief or a disciplinary outcome.

### **1020.11 GENERAL CONDUCT OF INVESTIGATIONS**

Administrative and criminal investigations shall be conducted separately and managed by different individuals. An administrative investigation may parallel a criminal investigation and prosecution.

- (a) The highest-ranking supervisor available in a subject employee's chain of command or IA will notify the Chief of accusations of employee criminal conduct as soon as practicable .
- (b) An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a civilian under the State and Federal Constitutions.
  - 1. No one shall administratively order a subject employee to provide any information to a criminal investigator.
- (c) The criminal investigator shall not have access to evidence, results, leads, and other information about the subject employee from the subject employee's compelled disclosures.
- (d) Any law enforcement agency is authorized to release limited information concerning the arrest of a peace officer which has not led to a conviction. However, no disciplinary action shall be taken against the accused employee based solely on an arrest or crime report. An independent administrative investigation shall be conducted in accordance with Agency policy.
  - 1. Information that is regulated by the Colorado Open Records Act, such as the contents of an employee's personnel file, shall only be released in a manner consistent with the Act.

#### **1020.11.1 INVESTIGATIVE PROCESS**

The purpose of this section is to outline the process used to investigate the conduct of Agency employees. It is intended to provide a guideline for supervisors to follow and gives employees an expectation of the investigation process.

- (a) Supervisors shall review Policy 1021 – Early Intervention System concerning complaint initiation, investigation, and tracking.
- (b) Supervisors will exercise good judgment in classifying investigations. They will discuss any uncertain situations with their chain of command or IA.
- (c) The City Attorney's Office will provide legal advice regarding investigative procedures or corrective action.

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- (d) Supervisors recommending discipline should first consult with IA to ensure the recommended action is consistent with similar situations.

#### 1020.11.2 ADMINISTRATIVE INVESTIGATION FORMAT

The Agency will investigate complaints about employee performance or conduct uniformly per the guidelines in this policy and the Early Intervention System (EIS) Policy. Investigators will thoroughly document in the IACMS every complaint investigation using the standardized format outlined in SOP 326. The documentation will include digitally recorded interviews, supporting material, investigation report, and official findings for each allegation.

##### (a) Performance Complaints

1. General: A Performance Complaint involves an allegation of a performance issue that comes to the attention of the Agency by any source. This type of complaint may include a citizen's perception about an employee's behavior, a minor violation of Agency policy, procedure, practice, or concern about incident handling.
  - (a) Subsequent similar performance issues occurring within 12 months from the initial complaint may result in a Level I investigation.
  - (b) Performance complaint issues typically require minimal investigation. Resolution often occurs by speaking with the concerned party and the employee(s) involved. This type of investigation is not appropriate for allegations that require the review of the Citizen Review Board pursuant to Section 2-139(2)(a) and (b) of the City Code. However, the Chief can forward any investigation to CRB at their discretion.
2. Investigator:
  - (a) The employee's direct supervisor generally investigates Performance Complaints. Nothing in this policy prohibits another supervisor from investigating if the Chief, Deputy Chief, an assistant chief, or the Director believes it will ensure a more effective investigation.
    - (1) The investigator will render findings, and if not in IA, will recommend discipline and comment on their discipline recommendations.
3. Disciplinary and/or Corrective Action:
  - (a) Examples of Performance Complaint corrective action include oral counseling, mandated training, modification of job duties, a written apology, and consideration in the employee's next performance evaluation.
  - (b) Discipline involving oral or written reprimands requires an investigative report, the supervisor review of findings form, and the supervisor review of discipline form.
  - (c) The highest-level reviewer, or their designee, must complete a Disciplinary Action Form if discipline is imposed and provide the subject employee with an outcome of findings memorandum.
  - (d) Before imposing a suspension, involuntary demotion, or termination of employment, the investigator shall forward the investigation and disciplinary recommendations through the designated chain of review, including the Chief of Police for review and comment.
  - (e) The Agency may consider corrective action, modification of job duties, change of assignment, or other methods of correcting the behavior, regardless of the official finding.
4. Review Process:

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- (a) The employee's chain of command, from the immediate supervisor to the Division Head, will review completed investigations. Some discipline recommendations require the investigation be forwarded above the Division Head [see 1020.11.2(a)(3)(d)].
  - (1) The review will typically begin with a supervisor of at least equal rank to the subject employee and must include two levels of review.
    - (a) Only personnel in sergeant-level supervisory positions or higher are eligible to participate in the review process.
- (b) A review may be completed by supervisors outside the involved employee's chain of command if the Chief, Deputy Chief, assistant chiefs, or the Director believes it necessary.
- (c) Each supervisor in the chain of review shall review the investigation and prepare written comments on the findings and recommendations as to discipline.
- (d) If the Chief receives an investigation, the Chief will review the completed investigation, the findings, the recommended discipline, the Citizen Review Board findings (if applicable) and take one of the following actions.
  - (1) Send the case back for additional investigation; or
  - (2) Render findings and authorize and/or impose any appropriate administrative discipline and corrective action.
    - (a) Before the Chief decides on the recommended discipline of a suspension, involuntary demotion, or termination of a classified employee who has completed their introductory period, there will be a pre-decision hearing. The hearing process is described in the City of Fort Collins Personnel Policies and Procedures and Collective Bargaining Agreement (if applicable).
  - (3) If the subject employee is entitled to and requests an FOP review within the time permitted, the Chief will consider their findings prior to imposing discipline.
  - (4) As soon as practicable after the Chief renders his or her decision and determines whether any discipline and/or corrective action should be imposed, the affected employee and the employee's chain of command shall be notified in writing.
  - (5) The complainant, if any, shall receive notification of the findings.
- (b) Level One Investigation
  - 1. **General:** A Level I Investigation involves an allegation that an employee violated clearly established Agency policies, procedures, or practices and may be brought to the Agency's attention by any source. A Level I Investigation involves an allegation that, if substantiated, could result in disciplinary action beyond that usually expected in a Performance Complaint.
    - (a) A Level I Investigation is not appropriate for allegations that require the review of the Citizen Review Board pursuant to Section 2-139(2)(a) and(b) of the City Code. However, the Chief can forward any investigation to CRB at their discretion.
  - (b) Some examples of investigations that should be considered Level I include but are not limited to allegations that:
    - (1) The police tactics used were inappropriate or unwarranted and did not rise to a Level II Use of Force allegation.
    - (2) An employee's behavior presented a significant safety risk to another person or a significant threat of property damage.



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- (3) An employee's driving presented a significant safety risk to another person or a significant threat of property damage, whether or not it resulted in a motor vehicle accident.
  - (4) An employee was involved in dishonest, untruthful, or fraudulent conduct.
  - (5) An employee engaged in conduct that:
    - (a) tends to seriously impair the operation or morale of the Agency,
    - (b) may cause the public to lose confidence in the police department,
    - (c) violates the public trust,
    - (d) or affects the reputation of the Agency or any employee.
  - (6) An employee's treatment of others was biased, unequal, or discriminatory in nature, but not rising to a Level II civil rights violation allegation.
  - (7) An employee participated in sexual harassment of another employee or citizen.
  - (8) Subsequent Level I Investigations involving similar conduct by the same employee within 12 months may result in the elevation of the investigation to a Level II Investigation.
2. Investigator:
- (a) Internal Affairs or the employee's direct supervisor investigates Level I complaints. Nothing in this policy prohibits another supervisor from investigating if the Chief, Deputy Chief, an assistant chief, or the Director believes it will ensure a more effective investigation.
    - (1) The investigator will render findings, and if not in IA, will recommend discipline and comment on their discipline recommendations.
3. Disciplinary and/or Corrective Action:
- (a) Examples of Level I discipline, and corrective action include an oral or written reprimand, mandated training, suspension, demotion, or termination.
    - (1) Level I investigations require an investigative report, the supervisor review of findings form, and the supervisor review of discipline form.
    - (2) The highest-level reviewer, or their designee, must complete a Disciplinary Action Form (if discipline is imposed) and provide the subject employee with a findings memorandum.
    - (3) Before imposing a suspension, involuntary demotion, or termination of employment, the investigator shall forward the investigation and disciplinary recommendations through the designated chain of review, including the Chief of Police for review and comment.
  - (b) The Agency may consider corrective action, modification of job duties, change of assignment, or other methods of correcting the behavior, regardless of the official finding.
4. Review Process:
- (a) The employee's chain of command, from the immediate supervisor to the Division Head, will review completed investigations. Some discipline recommendations require the investigation be forwarded above the Division Head [see 1020.11.2(b)(3)(d)].
    - (1) The review will typically begin with a supervisor of at least equal rank to the subject employee and must include two levels of review.
      - (a) Only personnel in sergeant-level supervisory positions or higher are eligible to participate in the review process.

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- (b) A review may be completed by supervisors outside the involved employee's chain of command if the Chief, Deputy Chief, assistant chief, or the Director believes it necessary.
  - (1) Instances where an administrative investigation is completed by an investigator who is not an FCPS employee, the chain of review will be determined by the Chief and as otherwise required by the Collective Bargaining Agreement (if applicable).
- (c) Each supervisor in the chain of review shall review the investigation and prepare written comments on the findings and recommendations as to discipline.
- (d) If the Chief receives an investigation, the Chief will review the completed investigation, the findings, the recommended discipline, the Citizen Review Board findings (if applicable) and take one of the following actions.
  - (1) Send the case back for additional investigation; or
  - (2) Render findings and authorize and/or impose any appropriate administrative discipline and corrective action.
    - (a) Before the Chief decides on the recommended discipline of a suspension, involuntary demotion, or termination of a classified employee who has completed their introductory period, there will be a pre-decision hearing. The hearing process is described in the City of Fort Collins Personnel Policies and Procedures and Collective Bargaining Agreement (if applicable).
  - (3) If the subject employee is entitled to and requests an FOP review within the time permitted, the Chief will consider their findings prior to imposing discipline.
  - (4) As soon as practicable after the Chief renders his or her decision and determines whether any discipline and/or corrective action should be imposed, the affected employee and the employee's chain of command shall be notified in writing.
  - (5) The complainant, if any, shall receive notification of the findings.
- (c) Level Two Investigation
  - 1. General: A Level II Investigation involves an allegation that an employee violated clearly established Agency policies, procedures, or practices and may be brought to the attention of the Agency by any source. A Level II Investigation involves an allegation that, if substantiated, could result in disciplinary action and is one in which review by the Citizen Review Board may be required or anticipated. It includes allegations that:
    - (a) An employee used force or discharged a firearm in violation of an Agency policy or applicable law;
    - (b) An employee committed a crime;
    - (c) As a result of an employee's act or failure to act, a person sustained severe injury or death or suffered a civil rights violation;
    - (d) An employee used deadly force, whether or not the use of such force results in death; or
    - (e) Any other matter the Chief or the City Manager determines should be a Level II Investigation or forwarded to the Citizen Review Board for review.
  - 2. Investigator:
    - (a) Internal Affairs investigates Level II complaints. Nothing in this policy prohibits another supervisor from investigating if the Chief, Deputy Chief, an assistant chief, or the Director believes it will ensure a more effective investigation.
      - (1) The investigator will render findings but will not recommend discipline.

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3. Disciplinary and/or Corrective Action:

- (a) Examples of Level II discipline and corrective action include an oral or written reprimand, mandated training, suspension, demotion, or termination.
  - (1) Discipline involving oral or written reprimands requires an investigative report, the supervisor review of findings form, and the supervisor review of discipline form.
  - (2) The highest-level reviewer, or their designee, must complete a Disciplinary Action Form if discipline is imposed and provide the subject employee with an outcome of findings memorandum.
  - (3) Before imposing a suspension, involuntary demotion, or termination of employment, the investigator shall forward the investigation and disciplinary recommendations through the designated chain of review, including the Chief of Police for review and comment.
- (b) The Agency may consider corrective action, modification of job duties, change of assignment, or other methods of correcting the behavior, regardless of the official finding.

4. Review Process:

- (a) The employee's chain of command, from the immediate supervisor to the Division Head, will review completed investigations. Some discipline recommendations require the investigation be forwarded above the Division Head [see 1020.11.2(c)(3)(d)].
  - (1) The review will typically begin with a supervisor of at least equal rank to the subject employee and must include two levels of review.
    - (a) Only personnel in sergeant-level supervisory positions or higher are eligible to participate in the review process.
  - (2) A review may be completed by supervisors outside the involved employee's chain of command if the Chief, Deputy Chief, assistant chiefs, or the Director believes it necessary.
    - (a) In instances where an administrative investigation is completed by an investigator who is not an FCPS employee, the chain of review will be conducted as determined by the Chief and as otherwise required by the Collective Bargaining Agreement (if applicable).
- (b) Each supervisor in the chain of review shall review the investigation and prepare written comments on the findings and recommendations as to discipline.
- (c) When a Force Review Board is required as described in Policy 301 – Response to Resistance Reporting and Review, that review will be conducted simultaneously with the chain of review.
- (d) If required by the City Code (sections 2-139 and 2-140) both investigation files (the administrative investigation and the Force Review Board review) shall be forwarded to the Citizen Review Board.
  - (1) When a Citizen Review Board review is required or allowed under Fort Collins Municipal Code, that review will be conducted following the command chain of review.
- (e) If the Chief receives an investigation, the Chief will review the completed investigation, the findings, the recommended discipline, the Force Review Board findings, the Citizen Review Board findings (if applicable) and take one of the following actions.

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- (1) Send the case back for additional investigation; or
- (2) Render findings and authorize and/or impose any appropriate administrative discipline and corrective action.
- (3) Before the Chief decides on the recommended discipline of a suspension, involuntary demotion, or termination of a classified employee who has completed their introductory period, there will be a pre-decision hearing. The hearing process is described in the City of Fort Collins Personnel Policies and Procedures and Collective Bargaining Agreement (if applicable).
- (f) If the subject employee is entitled to and requests an FOP review within the time permitted, the Chief will consider their findings prior to imposing discipline.
- (g) As soon as practicable after the Chief renders his or her decision and determines whether any discipline and/or corrective action should be imposed, the affected employee and the employee's chain of command shall be notified in writing.
- (h) The complainant, if any, shall receive written notification of the findings.

### **1020.12 INVESTIGATIVE FINDINGS**

One of the following findings will be used for each allegation in all administrative investigations:

- (a) Not Involved: The employee was not involved in the incident.
- (b) Unfounded: The allegation was false or not factual.
- (c) Exonerated: The incident occurred, but the employee's actions/behavior did not violate any City or Agency rule, regulation, policy, procedure, or training directive.
- (d) Not Sustained: There is insufficient evidence to prove or disprove the allegation.
- (e) Sustained: The allegation is supported by sufficient evidence establishing that the employee violated one or more City or Agency rule, regulation, policy, procedure, or training directive.
- (f) Duplicate: An allegation that garnered prior documented supervisory intervention or action.

### **1020.13 SPECIAL EXAMINATIONS**

- (a) Administrative investigations may employ any investigative procedure, method, or tool that is reasonable and appropriate to each specific case, which may include, without limitation:
  - 1. Polygraphs;
  - 2. Intoxilyzers;
  - 3. Blood tests;
  - 4. Urine tests;
  - 5. Finger printing;
  - 6. Photographs;
  - 7. Audio and video recordings;
  - 8. Medical examinations;
  - 9. Psychological examinations;
  - 10. Laboratory examinations;
  - 11. Lineups; and
  - 12. Financial disclosures with proper legal orders.
- (b) An employee under investigation may request such tests and examinations if it is reasonable to believe that such tests or examinations would benefit the employee's defense. The Agency shall pay for the costs of tests and examinations requested by the employee unless they would be duplicative of tests or examinations already conducted by

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the Agency. The employee shall be responsible for the costs of any such duplicative tests and examinations.

- (c) An employee under investigation may be compelled to submit to such tests and examinations that the investigator has reasonable grounds to believe may yield information or evidence relevant to the investigation. Refusal of an employee to submit to such tests and examinations shall subject the employee to disciplinary action, including termination from employment with the Agency.
- (d) Polygraph examinations for supervisory-initiated or complainant-initiated administrative investigations will not be administered without specific prior approval from the Chief of Police.
- (e) An employee who is the subject of a complainant-initiated administrative investigation shall not be required to take a polygraph examination unless the complainant has first undergone a polygraph examination and has been truthful to the material allegations, in the opinion of the examiner.
- (f) An employee who is the subject of a supervisory-initiated administrative investigation may be required to take a polygraph examination regardless of whether any other person has first undergone a polygraph examination.
- (g) Polygraph examinations will be specifically, directly, and narrowly related to the employee's official duties' performance and the issues raised in a specific investigation.
  - 1. Should an employee refuse to take a polygraph examination after being ordered to do so by the Chief in accordance with the above provision, the employee shall be subject to disciplinary action up to and including termination from employment within the Agency for refusal to obey an order.
  - 2. An examiner outside the Agency, chose by the Chief, shall administer polygraph examinations required under this policy. The Agency shall bear the cost of such examinations.
  - 3. Employees, complainants, and witnesses may take another polygraph examination for purposes of seeking a second opinion. The cost of second-opinion polygraph examinations is the responsibility of the party seeking the second examination.
  - 4. All polygraph examinations in administrative investigations shall be recorded by audio and/or video equipment.
  - 5. The results of all polygraph examinations shall be included in the investigator's report.
  - 6. All questions used shall be previewed with the person taking the exam. All parties involved in the chain of review may consider the polygraph examiner's report; however, polygraph reports shall be construed only as an opinion to be considered together with all other aspects of the investigation.

#### **1020.14 ADMINISTRATIVE SEARCHES**

- (a) Any employee may be compelled to disclose personal financial information pursuant to proper legal process if such information tends to indicate a conflict of interest with official duties, if the employee is assigned to or being considered for a special assignment, or to determine if the employee is engaged in unlawful activity.
- (b) Employees shall have no expectation of privacy when using telephones, computers, radios, or other communications provided by the Agency.

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- (c) Assigned lockers and storage spaces should only be administratively searched in the employee's presence, with the employee's consent, with a valid search warrant, or where the employee has been given reasonable notice that the search will take place.
- (d) All other Agency areas (e.g., desks, office space, and assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes (e.g., obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

#### 1020.14.1 ADMINISTRATIVE INVESTIGATIONS PROCEDURES

##### (a) Timeliness

1. Administrative investigations shall be completed expeditiously and consistent with the applicable deadlines outlined in Section 2-140 of the City Code related to the Citizen Review Board.
  - (a) Administrative investigations will be completed within 45 days of receipt or initiation of a complaint. The investigatory period may be extended for an additional 30 days upon written approval of the Chief of Police, the Deputy Chief of Police, an assistant chief, or director. The Chief of Police or the Deputy Chief of Police may grant additional time for good cause. Requests for extensions and approvals will be in writing and will be included in the investigatory file.
2. Allegations of past improper conduct by an Agency employee may be the subject of an administrative investigation regardless of the amount of time passed since the alleged misconduct.

##### (b) Conduct, Notification, and Documentation of Investigation

1. The investigator conducting the administrative investigation shall, as soon as practicable, notify the affected employee and the employee's chain of command in writing that an investigation is being conducted. The Chief may waive this requirement if they determine that such notification could compromise the investigation. That written notice may be in the form of an email if the investigation relates to a Performance Complaint, but IA forms for Level I and Level II notifications will be utilized for those types of investigations. The investigator shall also refer the affected employee to the policies about the employee's rights and responsibilities relative to the investigation.
2. The Chief shall be promptly advised of any allegation of misconduct serious enough to possibly require immediate action, such as relieving the employee from duty.
3. While conducting an administrative investigation, the role of the investigator is that of a factfinder. His or her purpose is to establish, as accurately and thoroughly as practical, the facts surrounding the incident, which precipitated the administrative investigation, and to render his or her findings. An investigator in the chain of review, if not assigned to Internal Affairs, will normally make disciplinary recommendations. Administrative investigations shall be conducted in a fair and impartial manner.

#### 1020.15 EMPLOYEE RIGHTS AND RESPONSIBILITIES IN AN ADMINISTRATIVE INVESTIGATION

- (a) Every Agency employee must maintain a working knowledge of all City or Agency rules, regulations, policies, procedures, and training directives. In the event of a Performance

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Complaint or alleged misconduct, it will be presumed that the employee was familiar with the City or Agency rules, regulations, policies, procedures, and training directives.

- (b) All Agency employees are required to cooperate in administrative investigations fully and truthfully. During an administrative investigation, no employee can be disciplined for refusal to make a statement to a supervisor or answer a supervisor's questions unless they were first given an administrative investigation advisement (otherwise known as the Garrity advisement) by a supervisor. The advisement shall include, in essence, the following:
  - 1. The employee must truthfully answer all questions specifically directed and narrowly related to the performance of official duties.
  - 2. Refusal to answer such questions truthfully will subject the employee to discipline up to and including termination.
  - 3. Any statements the employee makes, including answers to questions, and any evidence gained because of such statements, cannot be used against the employee in any subsequent criminal prosecution.
- (c) During an administrative investigation, subject employees, their representatives, or attorneys shall not contact any complainant or witness about the complaint or the investigation. The Chief or their designee can waive this restriction in writing. Employees shall not interfere with the investigation.
  - 1. Once an investigation is complete, the employee may receive notice of an impending pre-decision hearing. After receiving the notification, the employee or their attorney may contact the complainant and witnesses in the investigation for the limited purpose of preparing information to present at the pre-decision hearing. The employee shall respect the rights of the complainants and witnesses not to talk to the employee or their attorney about the investigation.
  - 2. No employee shall intimidate, threaten, or harass any complainant or witness or attempt to persuade anyone to withhold or falsify any testimony or not attend an administrative proceeding.
- (d) Any employee who becomes the subject of an administrative investigation shall be entitled to the following administrative process, which shall generally include the right to:
  - 1. As soon as practicable, receive notification in writing that an investigation is being conducted and the nature of the allegations. The Chief may waive this requirement if they determine that such notification could compromise the investigation.
  - 2. An opportunity to respond to the complaint or charge;
  - 3. The Agency's consideration of the employee's response;
  - 4. Attend a pre-decision hearing before the imposition of certain discipline to include a suspension without pay, a demotion, or termination. A pre-decision hearing does not apply to authorized volunteers, classified employees who have not completed their introductory period, and unclassified employees as defined in the City of Fort Collins Personnel Policies and Procedures;
  - 5. Receipt of the findings and decision concerning discipline within a reasonable time; and
  - 6. If discipline is imposed, the opportunity to initiate a grievance, appeal, or issue resolution process as provided by applicable City of Fort Collins Personnel Policies and Procedures (if applicable). The grievance and appeal processes do not apply to authorized volunteers, classified employees who have not completed their introductory period, and unclassified employees as defined in the City of Fort Collins Personnel Policies and Procedures.

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- (e) An employee under administrative investigation shall have the right to be informed of the employee's name and rank in charge of any interview or procedure required of the employee in the investigation before any interview or procedure.
  - 1. The employee shall have the right to the presence of one representative of their choice during any interview or procedure required of the employee in the investigation.
    - (a) The employee's representative shall not be a witness, the subject, or a potential subject of that administrative investigation. The employee's representative may not be involved in either the employee's administrative or criminal investigation or be a supervisor in the chain-of-command/review of the employee.
- (f) The employee shall have the right to be informed before the interview or procedure of all people who will be present and who will participate.
- (g) The representative's role is only an advisor to the employee and not a participant in the questioning or investigation. The employee's representative may not interfere with any questioning or investigation.
- (h) Administrative investigation interviews of the employee shall be conducted at reasonable hours unless the seriousness of the allegation requires immediate action.
- (i) Administrative investigation interviews shall be at a time convenient to the Agency and not at the convenience of the employee or the employee's representative.
- (j) The duration of an administrative interview shall be for a reasonable length of time. It shall allow for reasonable personal necessities and rest periods.
- (k) An employee being interviewed shall not be subjected to offensive language or threatened with transfer or discipline. The investigator shall make no promise or offer a reward to the employee as an inducement to answer questions.
- (l) An employee under administrative investigation may not review their investigation file until the investigation and the chain of review is complete. The employee may make a written request to the Chief of Police to review the file before any pre-decision hearing.
  - 1. Unless specifically authorized by the Chief of Police, only the subject employee and their legal counsel are authorized to review the relevant file.
- (m) The subject employee's administrative interview will be audio or video recorded by the Agency unless the investigator has a compelling reason and advance supervisory approval not to. The employee may request a copy of the recording. Any interview documented only in writing will require a review by the interviewee for verification of their statements.
- (n) The subject employee's administrative interview will take place in a private area within the Fort Collins Police Services building or at any other location agreed to by both the Agency and the employee. Interviews may be done on a recorded telephone line if the Agency is not able to conduct them in person.
- (o) The Agency shall not discriminate against an employee when the conditions of employment and the standards of investigation procedures are utilized on his or her behalf. No employee should be discharged, demoted, disciplined, denied promotion, or threatened with any such treatment because of the lawful exercise of the rights granted herein or the exercise of any rights under any existing administrative grievance procedure.

#### **1020.16 ADMINISTRATIVE DISCIPLINE AND CORRECTIVE ACTION**

- (a) Corrective action for a performance issue can be administered by any supervisor acting within the scope of their supervisory duties. A performance issue is defined as a minor



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violation of any Agency rule, regulation, policy, procedure, or training directive. Examples of performance complaint corrective action include oral counseling, mandated training, modification of job duties, a written apology, and consideration in the employee's next performance evaluation.

1. Discipline involving oral or written reprimands requires an investigative report, the supervisor review of findings form, and the supervisor review of discipline form through the Division head.
2. Before imposing a suspension, involuntary demotion, or termination of employment, the investigator shall forward the investigation and disciplinary recommendations through the designated chain of review, including the Chief of Police for review and comment.
  - (a) The highest-level reviewer, or their designee, must complete a Disciplinary Action Form and provide the subject employee with an outcome of findings memorandum
  - (b) The imposition of discipline is subject to the grievance and appeal procedures of the City of Fort Collins Personnel Policies and Procedures or any Collective Bargaining Agreement that supersedes City Policies and Procedures,
- (b) The Chief is the final authority for the imposition of administrative discipline and corrective action within the Agency. The Chief may follow, but is not bound by, the supervisor and the Citizen Review Board's findings and recommendations.
  1. The imposition of discipline is subject to the grievance and appeal procedures of the City of Fort Collins Personnel Policies and Procedures or any Collective Bargaining Agreement that supersedes City Policies and Procedures,
- (c) The imposition of discipline or corrective action resulting from an administrative investigation shall in no way preclude further sanctions imposed in any subsequent civil or criminal proceeding. Conversely, the outcome of any criminal or civil proceeding against an employee of this Agency shall not preclude the imposition of administrative discipline or corrective action.
- (d) A finding of "exonerated," "not sustained," or "duplicate" as defined in this policy does not prohibit the Chief or supervisor from recognizing potential employee problems and requiring corrective action.
- (e) Any employee who refuses to submit to the procedures described in this policy after being ordered to do so by the Chief or a supervisor may be subject to disciplinary action including termination of employment from the Agency.

#### **1020.17 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

Administrative Investigations will be completed regardless of whether the involved employee tenders a written retirement or resignation during the investigation or before the imposition of discipline.

- (a) If an employee leaves under these circumstances, the Chief will comment on the findings and the discipline that would have been implemented if the employee remained employed.
- (b) An employee's resignation or retirement during the investigation will be noted in the IACMS file.

#### **1020.18 ADMINISTRATIVE INVESTIGATION FILES**

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- (a) Files relating to administrative investigations are confidential, the property of the Agency, and shall be maintained by IA. Access to such files is limited to PSU personnel and those specific persons authorized by the Chief.
  - 1. A supervisor conducting an administrative investigation or performance review may have access to all the subject employee's administrative investigation files if the Chief, Deputy Chief, an assistant chief, or the Director first approves the access.
- (b) Except as provided in this policy, any record related to administrative investigations shall not be released without the Chief's prior approval.
- (c) After an administrative investigation has been completed and the chain of review is complete, the subject employee may submit a written request to the Chief to review that file's contents.
  - 1. The Chief may deny the request of all or any part of the administrative investigation file if they determine:
    - (a) the inspection is not in the best interest of the Agency or,
    - (b) the inspection is not in the best interest of any complainant/witness involved or,
    - (c) The inspection might compromise the investigation.
  - 2. Unless otherwise permitted by the Chief, such "review" by an employee shall be limited to reading and cursory notetaking and shall not include taking photos of, copying, or otherwise recording the contents of the file.
  - 3. However, permission from the Chief to view the file is not required if the administrative investigation meets the criteria for public inspection outlined in 24-72-303(4). Requests from subject employees to view their file should be made to the Internal Affairs sergeant.
    - (a) Officers are not allowed to copy or remove any part of the file during this review unless the contents are redacted per the guidelines in 24-72-303(4).
  - 4. Any documentation or information from an administrative investigation provided to the employee, or any review board, is considered confidential and may not be released in any way to another person or stored/posted in any way that could result in such release.
  - 5. The subject employee will be provided a copy of the statements they made in the administrative investigation upon written request.
- (d) Administrative investigation files will be maintained and archived, at a minimum, following the Agency's records retention schedule and state law.

#### **1020.19 DISCIPLINARY ACTION INFORMATION RELEASE**

Confidentiality is paramount while administrative investigations are ongoing. Information about ongoing investigations is released only on a need-to-know basis. This information is usually limited to the Executive Staff, limited personnel in the City's Human Resources and Attorney's office, and the Professional Standards chain of command.

After some administrative investigations, it is necessary and appropriate to administer corrective action or actual discipline to an employee to correct their behavior. Discipline is a private matter that should be kept between the employee, supervisors, and other people directly involved in the incident. Exceptions to the policy concerning disciplinary action information release will be made pursuant to CRS 24-72-303(4) and at the discretion of the Chief of Police.