



OFFICE OF THE DIRECTOR
THE UNIVERSITY OF TEXAS SYSTEM POLICE
POLICIES AND PROCEDURES MANUAL



TITLE: COMPLAINT INVESTIGATION		
POLICY NUMBER: B-9	EFFECTIVE DATE: OCTOBER 4, 2007	RESCINDS: II-74-4
RELATED LAWS:		RELATED STANDARD(S) / RULE(S):

I. PURPOSE

To insure an impartial and unbiased investigation into complaints involving officers of the University of Texas System Police

II. POLICY

It is the policy of the University of Texas System Police to receive and investigate complaints concerning the personal behavior or official acts of its officers.

III. SCOPE

- A. This procedure is established to provide an orderly, effective, and efficient process for receiving and investigating complaints against all "officers," as defined in the Code of Conduct Policy B-8, and to properly report the results of such investigations. A complaint against an officer may be lodged by any person in or outside the police departments.
- B. This procedure does not apply to:
1. Routine corrective action by a supervisor that does not result in disciplinary action. Corrective action is a primary duty of the supervisor and is not considered a complaint subject to this policy.
 2. Review and evaluation of the performance of an officer and any resulting disciplinary action taken against an officer for unsatisfactory work performance. Performance review and evaluation is not considered a complaint and is not subject to this policy.
- C. The investigation of allegations of improper actions other than illegal acts by University officers shall be considered an administrative complaint investigation. Nothing in this policy shall preclude a separate and completely independent criminal investigation of an officer who is the subject of an administrative complaint investigation. When it is suspected that a crime has been committed, the affected officer's Chief shall decide as to whether the administrative complaint investigation should continue. The affected officer's Chief shall also initiate a

separate and completely independent criminal investigation when the facts so warrant. When possible, the local county or district attorney shall be consulted when a criminal investigation is begun.

IV. DEFINITIONS

For the purposes of this policy, the following definitions apply:

- A. Complaint -- a complaint is an allegation(s) against an officer of the University of Texas System Police that could result in disciplinary action and that alleges one or more of the following:
 - 1. An infraction of the University of Texas System Police Code of Conduct, Policies and Procedures issued by the Director of Police or the rules, regulations, or policies of an institution police department;
 - 2. An illegal act;
 - 3. An infraction of rules and regulations of the Board of Regents of The University of Texas System.
- B. Chief -- includes the terms Chief of Police as defined in Section C. and, as applicable, the Director of Police as defined in Section E.
- C. Chief of Police -- chief administrative officer or designee of an institution Police Department.
- D. Civilian personnel -- every employee of an institution Police Department or the Office of the Director of Police not included in the definition of officer set forth in subsection 1.3.11 of Policy B-8.
- E. Director of Police -- chief administrative officer of the Office of the Director of Police of the University of Texas System Administration.

V. COMPLAINT PROCEDURE

- A. Recording Complaints

Personnel Complaint Form DP-42 (Appendix A - hereinafter Form DP-42) will be used to record **all** complaints received and/or initiated by University of Texas System Police personnel. Form DP-42 will contain not only the alleged improper action, but will also include the policy, rule, or regulation allegedly violated. All DP-42 forms will be forwarded to the affected officer's Chief, as soon as practicable after initiation and a copy will be forwarded to the Director of Police.

B. Processing Complaints:

1. In Person:

A person desiring to make a complaint will be furnished the name and address of the person to whom the complaint should be directed (if other than original receiver).

Individuals filing complaints against commissioned peace officers should be advised that Texas law requires complaints be submitted in written form with the complainant's signature affixed (*Texas Government Code Section 614.022*).

2. Written Complaint:

In the event a complaint is communicated by letter, affidavit or other written document, a supervisor will complete a Form DP-42, specifying the policy, rule, law or regulation at issue and attach the complainant's original written document.

3. By E-Mail:

Any department employee receiving a complaint by e-mail shall place a copy of the correspondence in a sealed envelope and forward it through their supervisor to his or her Chief who will determine investigative responsibility.

4. By Telephone:

When a complaint is received by phone the caller will be advised of the above and requested to submit the complaint in writing. If the complainant declines to put the complaint in writing, the complaint should be processed as provided in Section V, Subsection B.5.

5. Complaint Not In Writing:

a. If the complainant refuses to put the complaint in writing, it should be explained that this will not necessarily prevent an investigation from being conducted, but that failure to submit the allegation(s) in writing will cause the matter to be more difficult to process to an effective conclusion.

b. In instances when a complaint is not received in written form, the officer's supervisor will record the complaint on Form DP-42.

6. Anonymous Complaints:

Anonymous complaints will be investigated regardless of the manner in which the complaint is received.

7. Complaints Initiated or Received by Supervisor:

Supervisory or command personnel will initiate a Form DP-42 when they have firsthand knowledge or reliable information regarding an infraction or illegal act.

Supervisory or command personnel receiving or initiating a complaint involving an officer not subject to their immediate supervision, will initiate and forward a Form DP-42 to the affected officer's supervisor or commander as soon as practical.

C. Routing of Complaints:

Complaints will be investigated and forwarded through the chain of command to the affected officer's Chief who will review and take appropriate action.

D. Notifications:

1. To Complainant:

Written notification will be sent to the complainant advising that the complaint will be investigated and that he or she will be contacted personally, if possible, in the near future to discuss the allegations.

2. To Affected Officer:

a. A copy of the completed Form DP-42 and a Garrity Warning form (Appendix B) should be provided to the affected officer by his or her supervisor or assigned investigator within ten (10) calendar days, or as soon as practicable, after the complaint is received. This must be done before any disciplinary action may be taken against the officer. The officer shall be advised to refrain from contacting the complainant in any way which might be interpreted as an attempt to discourage the complainant from following through with the complaint.

b. The officer must be advised of and furnished copies of the complaint procedure and the supervisor or assigned investigator must obtain a timed and dated receipt of acknowledgement from the officer.

E. Officer Right to Respond:

1. At the time the officer is furnished a copy of the complaint, the officer may be ordered to respond to the allegations.
2. If, during the course of an investigation, additional infractions are discovered, the affected officer will be afforded the opportunity to respond to these allegations in the same manner as the original complaint.

F. Immediate Suspension:

In situations in which the best interests of the University of Texas System Police require immediate suspension or instances involving aggravated or serious circumstances, the affected officer's Chief may immediately suspend the officer subject to the investigation. Officers may be suspended with or without pay for a period of time designated by their Chief.

1. Suspensions with or without pay:
 - a. Suspensions will be with pay unless allegations involve serious misconduct, in which case the affected officer's Chief may immediately suspend without pay.
 - b. Examples of serious misconduct include, but are not limited to, criminal offenses of the felony grade, Class A or B misdemeanors, direct insubordination, and conduct which indicate that the officer is no longer fit for duty. Such a suspension may be imposed only by the affected officer's Chief or designee and such suspension without pay shall not exceed thirty (30) calendar days in length unless extended as hereinafter provided and such shall be communicated in writing to the officer. The suspension will expire when administrative action is taken against the officer.
 - c. If, at the conclusion of the administrative investigation, no disciplinary action is taken against an officer placed on leave without pay, back pay will be restored.
 - d. If, at the conclusion of the administrative investigation, the officer receives a disciplinary suspension, the previous period of suspension without pay shall have no effect on the duration of the disciplinary suspension imposed.

2. Notification of suspension:

The officer will be notified in writing by his or her Chief or designee of the suspension without undue delay. The written notice shall include the reason(s) for suspension in sufficient detail to reasonably enable the officer to respond to the reason(s). The notice will also contain an order

informing the officer that he or she is prohibited from taking any law enforcement action during the period of suspension.

3. Surrender of Equipment:

Suspension requires the suspended officer to surrender all issued firearms, commission identification card, badge(s) and keys. The suspended officer is prohibited from taking any law enforcement action during the suspension.

4. Notification to Director of Police:

When an officer is suspended, the Director of Police will be notified immediately, utilizing the Personnel Disciplinary Report DP -32.

5. Reinstatement of Officer:

An officer who had been suspended without pay may be reinstated with all accumulated pay, if the officer's Chief has exonerated him or her or has determined that the complaint was unfounded or not.

G. Investigation:

1. Objective:

The affected officer's Chief will be responsible for ensuring a complete, objective, and expeditious investigation of any complaint. If a resignation is received from an officer under investigation, the Chief shall determine whether the investigation should continue.

2. Who Shall Investigate:

No person, other than the affected officer's Chief and/or the assigned investigator, will investigate personnel complaints. This includes contacting witnesses, complainants or others involved. If information regarding a complainant comes to an officer's attention, he or she shall provide the information to the assigned investigator or his or her Chief.

3. Purpose of Investigation:

The purpose of an investigation is to seek out the facts associated with a complaint to ascertain the truth. The investigator shall make every attempt to conduct an investigation in a manner that will prove or disprove the allegations of misconduct rather than leave them unresolved.

4. Procedure for Investigation:

If the alleged improper act could be a crime or an infraction that could result in disciplinary action, the investigation shall include:

- a. Personal contact with the complainant by the investigator (when at all possible) to fully discuss the complaint.
- b. Personal contact with the accused officer by the investigator, in every instance, to fully discuss the allegations.
- c. Personal contact when at all possible with all known witnesses.
- d. The investigator has the option of recording interviews with the complainant, witness, and/or accused officer for review and preparation in typed form.
- e. The investigator should attempt to obtain statements (written and signed) from complainants, accused officers, and/or witnesses as deemed necessary to support or refute the allegations being investigated.
- f. Obtaining all known relevant legal evidence and/or other documents to support or refute the allegations being investigated. The investigator with specific authorization by the affected officer's Chief will be allowed access to all necessary departmental records.
- g. Implementation of scientific investigative aids (laboratory services, polygraph, etc.) as deemed necessary to support the integrity of the investigation.
- h. Investigator submission of a detailed investigation report fully addressing all allegations made, setting forth the facts as determined, including all statements, pertinent matters or items of legal evidence, supporting documentation, and a summary or synopsis of the case including a clear indication of the seriousness of the case.

5. Cooperation:

- a. Any officer who is the subject of an administrative complaint investigation shall cooperate fully and answer all questions posed by authorized representatives of the department during the investigation. All department employees questioned concerning their knowledge of a complaint will fully cooperate and answer truthfully such questions.

- b. Any officer who refuses to cooperate or answer all questions concerning the administrative complaint investigation may be subject to disciplinary action completely apart from the original complaint. If an officer refuses to answer the questions of the investigator(s) in an administrative complaint investigation on the grounds that he might incriminate himself, the investigator shall discontinue any questioning and his or her Chief shall be advised of the position taken by the officer. The Chief shall make a determination as to whether the officer shall be required to cooperate and answer the questions propounded to him. If the Chief determines that the officer shall be required to respond, the Chief shall so advise the officer in writing, utilizing a Garrity Warning (see example in Appendix B) setting out the reasons for the decision and the possible consequences of the officer continuing to refuse to respond to the questions. If after being advised of his or her rights, the officer thereafter refuses to answer questions pertinent to the investigation he or she may be subject to disciplinary action, including termination from employment.

- c. Confidentiality:

It is prohibited for any officer or civilian departmental employee having knowledge in or engaged in an administrative complaint investigation involving a University of Texas System Police officer to divulge to any person engaged in a criminal investigation of the same officer concerning the same subject matter of the administrative investigation, any statement or information derived from a statement made by the officer who is the subject of both investigations.

6. Length of Investigation:

Complaint investigations shall be completed, reviewed, and submitted to the affected officer's Chief not later than twenty-eight (28) calendar days following the receipt of such complaint, unless additional time is granted by the Chief.

7. Interview of Accused:

- a. Personnel who are assigned to investigate complaints involving an officer's non-criminal misconduct shall be required to conduct a detailed, timely, and objective interview with the officer accused of the misconduct. The purpose of this interview is to secure from the officer a comprehensive and factual response to the complaint.

- b. Prior to the interview in an administrative investigation, the accused officer shall be given a Garrity Warning (See example in Appendix B). The results of the interview will be reduced to writing and any statement obtained during this interview will be obtained under oath. Any further response or rebuttal the officer desires to make will be provided to the investigator within five (5) calendar days and included in the investigative report. The accused officer will not be permitted to have counsel present during an interview regarding alleged non-criminal misconduct.

H. Officials Apprised:

The Director of Police and the institution Vice President for Business Affairs or administrative equivalent will be kept apprised regarding complaint investigations of a very serious nature when:

1. Dismissal of the accused officer appears imminent;
2. Criminal prosecution of the accused officer appears justified;
3. The reputation of the Department is in jeopardy as a result of the action of the accused officer;
4. Publicity may result.

I. Withdrawal of Complaints:

1. If a complainant expresses the desire to withdraw a complaint and has no desire for the complaint to be pursued further, the complainant, in the presence of a supervisor, shall be requested to sign a Complaint Waiver Request Form (DP-43) (Attachment D).
2. All Complaint Waiver Request Forms shall be forwarded to the affected officer's Chief as soon as practicable.
3. The fact that a complainant has withdrawn a complaint does not necessarily terminate the investigation. The decision to terminate the investigation rests with the affected officer's Chief.

J. False Information:

Whenever a complainant deliberately gives false information causing the University of Texas System Police to conduct an investigation, this information should be presented to the appropriate prosecutor under the appropriate Texas statutes.

VI. DETERMINATION, NOTICE AND DISCIPLINARY ACTION

A. Investigation Review:

1. The affected officer's Chief shall be responsible for reviewing the investigation and providing written notification to the officer advising the officer of the findings and whether or not disciplinary action is forthcoming in the case. This notification must be prior to any disciplinary action.
2. The notification should be delivered to the affected officer in person or by certified mail, return receipt requested, to the officer's last known address. A sample Notification of Pending Discipline letter is attached as Appendix C.

B. Determination Notice:

The notice to the officer shall contain a final conclusion for each allegation as determined by his or her Chief. One of the following conclusions will apply:

1. **Unfounded:** The allegation is false, not factual.
2. **Exonerated:** The incident occurred but was lawful and proper or was justified.
3. **Not sustained:** There is insufficient evidence to prove or disprove the allegations.
4. **Sustained:** The allegation is supported by sufficient evidence.

C. Disciplinary Action:

In instances when the affected officer's Chief, or designee, determine that the complaint is sustained and that disciplinary action resulting in the termination, demotion, or suspension without pay of an officer is appropriate, the procedures outlined in Section V. of the Discipline and Appeal Procedure, Policy B-11 shall be followed.

D. Closing the Complaint Process;

The case shall be considered closed upon a determination by the affected officer's Chief that the allegation is unfounded or not sustained or the officer is exonerated or if the complaint is sustained and disciplinary action is imposed on the officer.

E. Complainant Notification:

After the investigation is completed and final action taken, it will be the responsibility of the Chief to notify the complainant in writing within ten (10) calendar days of the final results of the investigation and what action, if any, was taken.

F. Notification to Director of Police:

A copy of the results of the investigation of the complaint, including any disciplinary action (detailed on Form DP-32), will be forwarded to the Director of Police and will become a part of the officer's personnel file.

G. Complaint Conference:

To ensure uniformity in the treatment of complaints, the Chiefs of Police and Director of Police will meet periodically to review disciplinary action(s) taken on complaints.

John T. Slettebo
Director of Police

REVIEWED BY OFFICE OF GENERAL COUNSEL:

Helen Bright
Managing Attorney

APPROVED:

Tonya M. Brown
Vice Chancellor for Administration

Appendix A

University of Texas System Police

DP Form #42

Personnel Complaint

Date: _____

Complainant's Full Name (Print or Type):		Complainant's Address:	Telephone No.:
Day & Date of alleged incident(s):		Approximate time of alleged incident(s):	
Location where incident occurred:			
If a person was arrested print name of arrested person:		Arrested person's address:	Telephone No.:
Indicate relationship of arrested person to complainant:			
Name or other identifying information relating to the employee against whom the allegation(s) is/are being made:			
-Witness or Witnesses (if any)-			
Name of witness:	Address of witness:		Telephone No.:
Nature of Complaint(s) Clearly indicate the nature of your complaint. (Use reverse side of the form if more space is needed.)			

(Use Reverse side of form, if needed)

Appendix B

GARRITY WARNING

You are required to respond to all questions asked of you in this administrative investigation. Further, you are required to assist investigators with any information they should request. If you fail or refuse to forthrightly answer any and all questions asked, you may be subject to disciplinary action up to and including termination from employment with the University of Texas System Police.

However, in accordance with the United States Supreme Court's decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967); your statement, as well as any information gained through your statement **cannot** be used against you in any criminal proceeding.

You are further ordered not to discuss this internal investigation with anyone other than your chain of command or attorney, including but not limited to witnesses or prospective witnesses. A violation of this order will be considered an act of insubordination, which could result in disciplinary action against you up to and including termination from employment with the University of Texas System Police.

Your signature below declares that you have read and understood this warning prior to the initiation of any investigatory interrogation.

Signed this _____ day of _____, 20____

Officer's Signature

Officer's Printed Name

Witness

Witness

Appendix C

DISCIPLINE SAMPLE

To: Officer Jim/Jane Doe

From: Chief John Smith

Re: COMPLAINT INVESTIGATION AND DETERMINATION

On _____, 20____, a campus employee filed a written complaint indicating that: (include specifics of complaint and infractions alleged; cite specific policies or rules by title and numbers).

An internal investigation, case #----- was assigned to and conducted by Sgt. James Jones. I have reviewed the investigation and have determined that the allegations regarding your conduct occurred as reported by the complainant; therefore, the complaint against you is classified as "Sustained."

As a direct result of your conduct, I intend to terminate your employment with the University of Texas System Police. I considered the severity of this incident and I carefully reviewed your personnel record before making this decision.

Before the termination is effective, you have the opportunity to tell me in writing, if any of the facts are incorrect or if there is any reason you should not be terminated. If you wish to take advantage of this opportunity, please submit a written statement to me explaining your position by ____ p.m. on _____, 20____. If I do not hear from you, I will assume that you do not wish to respond and the termination will become effective at 5:00 pm., _____, 20____. If you do respond, I will review the information you present and render a written decision to you.

Chief's Signature

Chief of Police

Cc: Human Resources, (Campus)
Director of Police, U.T. System

Appendix D

DP Form #43

UNIVERSITY OF TEXAS SYSTEM POLICE

COMPLAINT WAIVER REQUEST

DATE ____/____/____

To: Chief _____

I, _____ a resident of _____,

Texas,

_____ County, respectfully request that the allegations of misconduct directed by me toward University of Texas System Police Officer _____ be withdrawn. I do not desire to further pursue the matter.

Signature of Complainant

Reasons (if any) for this complaint waiver:

