



***Public Safety Officers Procedural
Bill of Rights Act (“POBR”)***

City of San Rafael
March 20, 2024

Who is Covered By POBR?

- “Public Safety Officer” includes:
 - Sheriffs, Undersheriffs and Deputy Sheriffs employed by a County;
 - Police Chiefs or Chief/Directors, or Chief Executive Officers of a Consolidated Municipal Public Safety Agency;
 - Any Police Officer employed by a City or other Municipal Safety Agency;
 - Any Police Officer of a District, including most Harbor Police;
 - Marshals or Deputy Marshals of a Superior Court or County;
 - Any Inspector or Investigator employed in that capacity in the Office of a District Attorney’
 - CHP, Department of Corrections, University Police....
- *What about Probationary Employees?*



When Does it Apply?

- When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department that could lead to **punitive action**, the interrogation shall be conducted under the following conditions:
 - “Punitive action” means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for the purposes of punishment
 - *This does not apply to counseling, instruction, or informal verbal admonishments by, or other routine or unplanned contact with, a supervisor or any other Public Safety Office*



What Applies? *A Right to Representation*

- Whenever an interrogation may result in punitive action against a Public Safety Officer, that Public Safety Officer shall have the right to a representative of his or her choice present at all times during the interrogation.
- The representative shall not be a person subject to the same investigation
- The representative shall not be required to disclose, or be subject to any punitive action for refusing to disclose any information received from the Public Safety Officer under investigation for non-criminal matters.



How the interrogation works?

- Provide Written Notice:
 - Officer under investigation shall be informed, of the name, rank and command of the officer in charge of the interrogation, the interrogating officers, and all other persons present. There shall be no more than two interrogating officers at one time, and the Public Safety Officer shall be informed of the nature of the investigation, prior to any interrogation.
- Conduct it at:
 - a reasonable hour
 - on-duty, unless the seriousness of the investigation requires otherwise
 - If conducted off-duty, Public Safety Officer must be compensated
 - Public Safety Officer can't be released from employment for any missing work while being interrogated

During the Interrogation

- A Public Safety Officer, under interrogation, shall not be subjected to offensive language or threatened with punitive action, except that an Officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action.
 - Lybarger Immunity/Garrity Statement
 - If, prior to or during the interrogation of a Public Safety Officer, it is contemplated that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.



Recorded the Interrogation

- The interrogation of a Public Safety Officer may be recorded, and the Public Safety Officer may bring his or her own recording device. The Public Safety Officer shall have access to any recordings prior to any further interrogation. The Public Safety Officer is entitled to a transcribed copy of any notes made by a stenographer or any reports or complaints made by investigators or other persons, except those portions that are required by law to be kept confidential.
 - Confidential reports shall not be entered into a Public Safety Officer's personnel file.



After Interrogation? One-Year SOL!

- Punitive action or denial of promotion on ground other than merit shall not be undertaken if the investigation of an allegation is not completed within one year of discovery, if the discovery of the act, omission, or other misconduct occurred on or after January 1, 1998. If it is determined that discipline may be taken, **the investigation must be completed** and the Public Safety Officer must be notified of the proposed disciplinary action within one year.
- Exceptions:
 - Criminal Tolling
 - Multiple Witnesses
 - Multi-Jurisdictional Issues
 - Waiver



Providing Officer with Notice of Adverse Action

- If the Public Agency decides to impose discipline, that Agency shall notify the Public Safety Officer, in writing, of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of the decision, except where the Public Safety Officer is unavailable for discipline.



After the Interrogation? Right to Appeal

- Punitive action or denial of promotion on grounds other than merit shall not be undertaken against any **non-probationary Public Safety Officer** without providing the Public Safety Officer with an opportunity for administrative appeal.
- Police Chief:
 - A Police Chief shall not be removed without written notice and an opportunity for administrative appeal. Nothing in this subdivision shall be construed to create a property interest, if one does not otherwise exist by rule of law, in the job of Police Chief



Miscellaneous

- Locker:
 - A Public Agency employer cannot search a Public Safety Officer's locker or other space for storage unless he or she is present, or consents, or has been notified that a search will be conducted, or a valid search warrant has been obtained.
- Lie Detector Test
 - Cannot Compel Officer to submit to a lie detector test.
- Brady List
 - Cannot punish for being placed on Brady list (but can for underlying behavior)
- Personnel Files:
 - A Public Safety Officer shall not have any adverse comments entered in a personnel file (or any other file used for personnel purposes), without the Public Safety Officer having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment. If the Public Safety Officer has read the instrument and refuses to sign it, that fact shall be noted on the document, signed or initiated by the Public Safety Officer, and then the entry may be made. Officer has 30 Days to file a written response.
- Political Activity
 - Unless a Public Safety Officer is on duty and in uniform he or she may not be prohibited from engaging in, or coerced/required to engage in political activity nor shall a public safety officer be prohibited from seeking election to the governing board of a school district. (Including Display of American Flag)
- Media:
 - A Public Safety Officer's photograph and contact information shall not be given to the media, nor shall a Public Safety Officer be subjected to visits by the media without the express consent of the Public Safety Officer.

Enforcement of the Act

- It is unlawful for any public safety department to deny or refuse any Public Safety Officer the rights and protections of this Act, and a Public Safety Officer or association may file a lawsuit in superior court alleging violations of this Act.
 - Injunctive Relief
 - \$25,000 Civil Penalty
 - Actual Damages
 - Attorney Fees
 - Do not have to exhaust administrative remedies

Question/Council Discussion





burke

BURKE, WILLIAMS & SORENSON, LLP

San Rafael Police Department
PROFESSIONAL STANDARDS BUREAU



**INTERNAL AFFAIRS INVESTIGATION
MANUAL**

Law Enforcement Code Of Ethics

AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I RECOGNIZE the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself to my chosen profession...law enforcement.



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Introduction and Purpose

This manual was prepared to assist first-line supervisors and others who may be charged with the investigation of internal and external complaints and administrative internal investigations involving sworn and non-sworn police department personnel. It is intended as a guide, but should not replace input from management and the agency's counsel.

Statement of Purpose

The goal of an internal affairs investigation is to ensure that the integrity of the department is maintained through a system of internal discipline where objectivity, fairness, and justice are assured by intensive, impartial investigations and reviews.

It is hoped that this manual, together with impartial investigations, will help determine real or potential causes of problems relating to human relations and remedy identified deficiencies; ensure proper corrective action is taken when appropriate; and, protect personnel from unwarranted criticism when they perform their duties in an approved and appropriate manner. Such procedures are intended to do the following:

- Clear those innocent of misconduct.
- Establish the fault of wrongdoers.
- Facilitate prompt and just disciplinary action.
- Reveal faulty practices or procedures.

Working familiarity with the Public Safety Officers' Procedural Bill of Rights Act and applicable decisional law is essential and is part of this manual.

COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified into one of the following categories:

Informal - A matter in which the Shift Supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Professional Standards Unit, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Professional Standards Unit, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

Agency Obligation to Investigate Employee Misconduct

The obligation of a law enforcement agency to investigate alleged or suspected employee misconduct stems from several sources. For example, Penal Code 832.5 provides:

(a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies and shall make a written description of the procedure available to the public.

The oath of office taken by officials of law enforcement agencies obliges them to enforce all laws and agency rules and regulations governing employee misconduct. In addition, the failure to investigate and correct subordinate employee misconduct can provide the basis for the removal of an official from office or constitute grounds for civil liability.

In carrying out an agency's duty to investigate complaints of employee misconduct, agency officials conducting an administrative investigation have the legal right to ask employees, under pain of discipline, any questions that are **narrowly, specifically, and directly** related to the employee's performance of his or her official duties as a peace officer. An employee who fails or refuses to answer such narrow, specific, and direct questions concerning the performance of his or her duties may be disciplined for insubordination.

As a rule, no constitutional protections against self-incrimination exist in administrative investigations. However, any incriminating statements, that are the product of such compulsion, are inadmissible in criminal proceedings against the same employee. Statements obtained in violation of rights secured by Government Code 3300-3311 might similarly be inadmissible in an administrative disciplinary proceeding.

Administrative Investigations

The Department's administrative investigations may be conducted by an investigator assigned to the Professional Standards Bureau, a supervisor within the employee's division, or who the Division Commander designates. In any case where a department's investigation could lead to "discipline," i.e., any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." (Government Code 3303), the investigation is administrative in nature and must be conducted in a manner consistent with provisions of the Public Safety Officers Procedural Bill of Rights Act, (Government Code 3300) and other applicable statutory and decisional law. The guarantees of the Bill of Rights apply to "All peace officers as defined in 830.1 and subdivisions (a) and (b) of 830.2 of the Penal Code." And "All persons employed by the state of California and designated by law as peace officers." Government Code 3301.

[CLICK HERE FOR SAN RAFAEL POLICE DEPARTMENT POLICY MANUAL](#)

Internal Affairs Formal Investigations Procedures

A complaint, both internal and external-initiated, will be classified as a formal investigation based on the allegation, if sustained, would seemingly result in discipline of a Letter of Written Reprimand or higher. These complaints will be investigated by a supervisor designated by the Division Commander.

Complaint Received

The following will give you the detailed sequence of events that the investigating officer should follow when investigating an internal affairs complaint (Lexipol 1011.4):

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. The receiving member shall obtain contact information sufficient for the supervisor to contact the complainant and enter the complaint into the *Internal Complaint Tracking Form*, which is the log that tracks all incoming complaints. After completing the *Internal Complaint Tracking Form* the receiving member shall direct the complaint to the supervisor. If the supervisor is not immediately available the receiving member shall notify the supervisor of the complaint as soon as reasonably possible. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs, or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of the complaining party's statement at the time it is filed with the Department (Penal Code § 832.7).

Read the complaint!

Determine the specifics of the complaint. Make sure you truly know what the complainant is saying and what the allegation(s) are. The complaint information from the Division Captain or Lieutenant will indicate whether the complaint is a Formal or an Informal investigation. This distinction is important because the two types of investigations are handled differently. The following instructions will guide you for all Formal investigations. Refer to the section titled Divisional Investigations for guidance

Starting the Investigation:

Once assigned an investigation, the investigator should take standard steps to prepare their investigation, such as:

1. Read all materials included in the packet received by the Lieutenant or Captain.
2. Begin chronologically documenting steps taken, such as the date/time assigned, and how the investigator was notified. This information is later transferred to the "Formal Internal Affairs Investigation Report." This should be documented in an Investigators Log Form **IA-09**
3. Identify all parties included in the allegation, and who may need to be contacted or interviewed.
4. Complete any background research to familiarize yourself with the facts of the case. This may include researching RIMS/CLETS history, and reviewing incident reports, video footage, or other evidence.

Subject Officer/Employee

5. Serve the member with the Notice of Investigation. Form **IA-01**. This form officially notifies the member that they are under investigation and allows them to contact the appropriate representative if desired prior to their interview.
 - a. Use form **IA-07** to notify the officer if the complaint has alleged serious misconduct per PC 13510.8 (SB2) and a report is being forwarded to the Police Officer Standards and Training (POST). (PSU Lieutenant or Sergeant will handle)
 - b. If applicable use form **IA-08** if the employee is being placed on Administrative Leave

Witnesses

- a. If there are witnesses that need serving, serve them with Notice of Witness Interview Form **IA-02**.
- b. Witnesses are NOT entitled to representation. You may interview them immediately if desired, or provide a short courtesy period prior to the interview.

When Interviewing Witnesses:

- i. Witnesses do not have a right to a representative so make the interview soon after your contact.

- ii. Order the employee witness not to discuss the case or any aspect of it with anyone; make sure they understand your order. (Refer to written instructions.)
 - iii. The only reports employee witnesses are allowed to see are those they have prepared, such as arrest or incident reports.
 - iv. If, during the course of an interview, a witness makes a statement or otherwise gives you information that leads you to believe they are or could be guilty of a violation of the San Rafael Police Department Policy Manual or other policy/statute violation that could lead to discipline, you must stop the interview and read them the administrative investigations admonishment. This means if they want a representative, you will have to reschedule the interview.
6. Schedule interviews as necessary.
 7. Research Lexipol policies, Department Directives, or Notices that apply to the allegation (Example: If the investigation includes an allegation that a member used harsh or profane language, the applicable Policy is 320 – STANDARDS OF CONDUCT.)
 8. If necessary, complete a list of questions to ask the respective parties during interviews. Reference Policies, Department Directives, or Notices to understand the “elements” of the alleged rule violation, to help determine what questions to ask each party.
 9. Serve the Subject Officer/Employee with the Notice of Subject Officer Interview. Form IA-03.
 - a. You may need to send an amended form **IA-03** if the date/time and location are not known at the time of initial service.

INTERVIEWS

Interviews:

Note: Recording interviews is highly encouraged.

1. When possible, conduct interviews in this order:
 - a. Complainant
 - b. Witness
 - c. “Named” Officer (Accused member)

2. Interviews of non-SRPD members can typically be handled via telephonic interview. The member conducting the investigation shall memorialize efforts to contact complainants and witnesses.

3. Interviews of SRPD members are usually conducted in person, and shall be conducted in a private area of the Station or neutral office space.

4. At the beginning of the interview, and once the audio recorder is recording, serve and read the member with the Interrogation Admonition for Peace Officers Form **IA-04**

5. Serve and read the member with the Miranda and Lybarger Admonitions Form **IA-05**

6. Conduct Interview

1. Note on the recording what the allegations are for the record. (stay within the scope of investigation)
2. Once the above steps have been taken, you may proceed with the content of your interview. Begin with a few contextual questions, such as having the member state and spell their name, their badge number, their assignment, etc. If a non-member establishes their relation to the case (i.e. Citizen who made the complaint after a traffic stop, etc.)
3. Ask questions specific to the elements of the rule violation to help definitively prove or disprove the allegation.
4. Ask Questions to:
 - a. Establish the accused member was on duty or present during the incident.
 - b. Ask open-ended questions.
 - c. Ask direct questions.
 - d. Don't answer for the accused member. Be patient and let the member talk.
 - e. The member is required to answer all questions asked of them.
5. At the conclusion of the interview, conduct a "Closing" that will allow the member the opportunity to provide any evidence that is relevant to the case, or make a statement if they desire.
6. Notify the member that the case is under investigation, and will be forwarded to the appropriate Lieutenant or Captain for review when completed.

7. Conduct a Thorough Investigation

- a. Follow these steps to ensure your case file is complete:
 - During the course of the investigation, various documents may be generated or used as evidence.
 - Retain these documents for the case file.
 - Attach all documents used (photos, RIMS print-outs, etc.)
 - Download all recorded interviews to a digital storage device for later attachment.
8. Once your investigation is complete, utilize the Formal Internal Affairs Investigations Report template to document the investigation. The Formal Report is written in memo form, with individual sections to address each portion of the investigation.
 - a. On the template, replace all the red-highlighted with your investigative notes
9. Conclusion Section of the Formal Report:
 - a. Once all investigative steps have been completed, the investigator should determine a finding for each of the allegations. The finding is based on a preponderance of evidence. This is usually described as 50.1% of the evidence indicating that the misconduct occurred or when it is more likely than not that a violation of policy or procedure has occurred.
10. Apply the facts of the case to the definitions below to determine the finding for each allegation. The criteria for each finding are:

Definitions:

Each personnel complaint shall be classified with one of the following dispositions:

- **Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).
- **Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful, and/or proper.
- **Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.
- **Sustained** - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304

and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

11. The Preliminary Investigation is now Complete and should be forwarded to the appropriate Lieutenant or Captain for review.
12. The Division Captain will review the report and either send it back for further investigation or approve the report. Once the report has been approved the Division Captain will submit to the Chief of Police a Division Commander Comments Report Form **IA-06**.

If an employee or their representative requests a copy of their recorded interview, one must be given to them as soon as is reasonable. During normal business hours, a copy may be made by a representative of the Professional Standards Bureau. In most cases where a labor representative is present, they will also record the interview.

DO NOT GIVE YOUR OPINION AS TO THE OUTCOME OF THE INVESTIGATION!

Submitting the Investigation

Follow this procedure to have your investigation approved and returned to the appropriate Lieutenant or Captain:

1. Assemble all of your case documents in this order:
 - a. Formal Report
 - b. Supporting Documents (Photos, Evidence, etc.)
 - c. Original Documents that arrived with the packet
 - d. Digital files with audio, video, etc.

2. Present the completed investigation for review to the Division Captain.

3. The Initial Investigative Level portion of the investigation is now complete. The supervising Lieutenant or Captain will contact the lead investigator if any additional information is needed.

Best Practices for interviews:

1. Regarding Accused Civilian employees: Provide a copy of their Weingarten rights (attached) for their review prior to the interview. Once on the record during the interview, state that you provided them a copy of their Weingarten Rights, and have the member confirm this.
2. Union Representatives or Attorneys for members:
 - a. Witnesses are NOT entitled to representation. You may interview them immediately if desired, or provide a short courtesy period prior to the interview. This includes Officers and Non-Sworn Staff.
 - b. Accused members ARE entitled to representation prior to, and during the interview. Provide POBOR rights to sworn members (Government Code Section 3300, et seq.) Weingarten Rights apply to non-sworn members. Accused members may proceed with their representative, or they may proceed without representation if they choose. Members are to be afforded a reasonable amount of time to obtain representation.
 - c. If a member chooses to go forward without a representative, restate this information on the recorded interview and have the member confirm they don't wish to have a representative present.
 - d. If a representative objects to a question, allow them to state their objection, review the question to see if it can be stated a different way, and if so restate the question. If the question is pertinent to the interview, acknowledge the objection and order the named employee to answer the question. There are remedies should your question be deemed inappropriate.
 - e. Always give a representative a chance to ask questions or clarify points at the end of an interview.
 - f. If a representative requests a break to consult with their client, allow it, unless it will put you at a disadvantage. A representative should never tell their client not to answer a question. The only time this will happen is if the criminal consequences outweigh the administrative consequences. Once again, be reasonable with employees and their representatives.



San Rafael Police Department

1400 Fifth Ave.

San Rafael, CA 94901

DAVID C. SPILLER, POLICE CHIEF

OFFICE (415) 485-3000 www.srpd.org FAX(415) 485-3043

To:

From:

Date:

Re: CONFIDENTIAL - Notice of Subject Officer - Administrative Investigation

We have received a complaint alleging that you have violated policies and/or procedures with the San Rafael Police Department. *Insert summary details. You are the subject of this investigation.

This investigation is being performed by [redacted]. [redacted] will work with you to schedule an interview at an appropriate date and time.

To ensure a full, fair, and effective investigation in this matter, and in order to preserve public confidence in the City's ability to operate effectively, during the pendency of this investigation, you are directed not to discuss this investigation, including the specific allegations made against you, with anyone other than the investigator, your union representative and/or legal counsel. This order shall automatically be lifted at the conclusion of the investigation, when the need for accurate collection of information from individuals involved in or who witnessed events will abate. This order is not intended to prevent you from engaging in protected concerted activity under the Meyers- Brown Act. You may continue to engage in protected concerted activity under the Act, including but not limited to discussing any other aspects of your employment and working conditions with others including co-workers.

The [redacted] prohibits retaliation against employees for making the types of allegations that have made against you. I am directing you not to retaliate against anyone whom you believe was or is not involved in the complaint or investigation process.

Failure to comply fully with the provisions of this notice will be insubordination, and may result in discipline up to, and including, termination from employment.

If you have any questions regarding this notice, please contact me (415) 485-XXXX.

Employee Signature

Date

SRPD IA Form# IA-01



San Rafael Police Department

1400 Fifth Ave.
San Rafael, CA 94901

DAVID C. SPILLER, POLICE CHIEF

OFFICE (415) 485-3000 www.srpd.org FAX14151 485-3043

To:

From:

Date:

Re: CONFIDENTIAL - Notice of Witness Interview - Administrative Investigation

You are scheduled to be interviewed as a witness in connection with an administrative investigation into allegations of misconduct against an employee of the San Rafael Police Department. You are not the subject of this investigation and you are being interviewed solely in your capacity as a witness. No one has alleged any misconduct or wrongdoing on your part, and the San Rafael Police Department has no reason at this time to believe that this will be the case.

This investigation is being performed by +H. +H will work with you to schedule an interview at an appropriate date and time. The interview will be recorded. You are ordered to cooperate fully with +H, to answer questions in a complete and truthful manner and to obey any lawful orders given by him as though such order was coming from a superior in your chain of command with the San Rafael Police Department.

This investigation concerns allegations an employee of the San Rafael Police Department violated department and city policies. You are expected to maintain the confidentiality of this investigation and not discuss the investigation or its subject matter with other employees of the department.

If you have any questions regarding this notice, please contact me (415) 4185-3020.

Employee Signature

Date

SRPD IA Form IA-02



SAN RAFAEL POLICE DEPARTMENT

1375 FIFTH AVENUE, SAN RAFAEL, CA. 94901

DAVID C. SPILLER, POLICE CHIEF

OFFICE (415) 485-3000 www.srpd.org FAX(415) 485-3043

DATE:

TO:

FROM:

SUBJECT: Pre-Interrogation Notice
Internal/Administrative Investigation No.

Please be advised that the San Rafael Police Department is conducting an internal/administrative investigation to determine whether your alleged actions violated certain sections of its policies, general orders, rules, regulations, or directives. During the past** months, you are alleged to have
**

If true, these allegations would be in violation of the following Department and City policies, general orders, rules and/or regulations, and could result in disciplinary action up to and including termination:

- SRPD Policy Manual Section 339.5.1(c) *Violation of federal, state, local or administrative laws, rules or regulations.*
 - o California Penal Code Section 484(a) *Theft*
 - o California Penal Code Section 118.1 *Falsification of a Police Report*
 - o California Penal Code Section 135 *Destroying or Concealing Evidence*
- SRPD Policy Manual Section 339.5.7(b) *Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.*

This investigation will be conducted by **. There will be no more than one other officer present. All questions during the interrogation will be asked by and/or through no more than two interrogators at one time. You will be notified in the immediate future of the date *time* and place of your scheduled interrogation/interview.

The complete interrogation will be recorded. You will have access to the recording and transcription if any further proceedings are contemplated or prior to any subsequent interrogation. No notes, reports or other memoranda, deemed confidential by the Department, will be entered.



A RAFAEL POLICE DEPARTMENT

1375 FIFTH AVENUE, SAN RAFAEL, CA. 94901

DAVID C. SPILLER, POLICE CHIEF

OFFICE (415) 485-3000 www.srpd.org FAX(415) 485-3043

into your personnel file.

You have the right to be represented by a person of your choice who may be present during the interrogation. That person shall be not a subject *in* the same investigation.

Your representative shall not be required to disclose, nor be subjected to, any punitive action for refusing to disclose in any administrative process conducted by the Department, any information received from you while acting as your representative in non-criminal matters.

The Department offers no assurance that a non-attorney representative may not be compelled to disclose such information in any criminal or civil proceedings.

You will not be subjected to visits by press or news media persons without your express consent. Nor will your home address or photograph be provided to any media persons without your express consent.

If this interrogation occurs during your off-duty hours, you will be compensated in the manner prescribed by the current Memorandum of Understanding between your bargaining unit and the Department.

If before or during the interrogation, it is deemed that you may be suspected of the commission of a criminal offense, you shall be immediately informed of your constitutional rights.

You are advised that your rights are outlined in the Public Safety Officers Procedural Bill of Rights, Government Code Sections 3300-3311.

If you have any questions prior to the interrogation, please do not hesitate to contact me.

Thank you for your anticipated cooperation.

Receipt Acknowledged

Date:

Name of Officer



SA RAFAEL POLICE DEPARTMENT

1375 FIFTH AVENUE. SAN RAFAEL. CA. 94901

DAVID C. SPILLER, POLICE CHIEF

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INTERVIEW ADMONITION FOR PEACE OFFICERS

My name is _____ and my rank is ____ . I am employed in stlch. capacity by the City of San Rafael Police Department and am in charge of this investigation and the Personnel Complaint number listed above.

A. I present is R a n k(s) _____ I _____ N. a . n e(s), and his/her representative Name(s) _____ Firm(s) _____

Today fa Month I Day I Year and the time is Time.

- 1) Pursuant to Government Code § 3303(g), I am tape recording this interrogation. Officer _____ shall also have the right to record this interrogation and he/she IS or IS NOT (circle one) going to do so.
- 2) No more than 2 (two) interrogators may ask questions at any one time. I will be one of the interrogators
- 3) This interrogation session shall not extend beyond a reasonable time considering the gravity of the issue(s).

You will be able to attend to your own personal physical necessities. Please ask if you need a recess to use the bathroom, have a beverage or otherwise refresh yourself.

- 4) The name of this investigation is: _____
- 5) Prior to proceeding with the interrogation, do you have any questions regarding the admonitions that I have read to you?

This interrogation admonition was read to me on:

Dated this _____ day of _____ 202 , a _____ IIII. [S.

By my signature herein, I acknowledge my understanding of my rights and duties.

Subject Employee



~ R F EL POLICE DEPARTMENT

1375 FIFTH AVENUE, SAN RAFAEL, CA 94901

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**San Rafael Police Department
MIRANDA AND LYBARGER ADMONITIONS**

You have been asked to provide information as part of an administrative investigation. Failure to comply may subject you to disciplinary action. Please be advised that to protect your Fifth Amendment right against self-incrimination in a criminal proceeding, any information that you provide as part of this investigation cannot be used against you in any subsequent criminal proceeding.

Therefore, you are advised of the following rights:

- You have the right to remain silent and not incriminate yourself.
- You have the right to an attorney before and during questioning.
- If you cannot afford an attorney, one will be appointed for you before questioning, if you wish.

Check the below box if you wish to invoke your right against self-incrimination:

- I do not waive my Miranda Rights against self-incrimination.
- I do waive my Miranda Rights against self-incrimination.

This is an administrative investigation. If you invoke your rights against self-incrimination you are advised of the following:

- While you have the right to remain silent, in any criminal investigation, you do not have the right to refuse to answer questions as part of an administrative investigation.
- If you refuse to participate, your refusal can be deemed insubordination and can result in administrative discipline, up to, and including, termination.
- Any statement you make as part of this administrative investigation cannot be used against you in a later criminal proceeding.

Check the below box if you agree with the following statement:

- I agree to participate in this administrative investigation and will provide truthful answers to interview questions.
- I do not agree to participate in this administrative investigation and understand that my decision not to participate is subject to disciplinary action.

I acknowledge receipt of this form and understanding of its contents.

Name

Signature

Date



SAN RAFAEL POLICE DEPARTMENT

1375 FIFTH AVENUE, SAN RAFAEL, CA. 94901

DAVID C. SPILLER, POLICE CHIEF

OFFICE (415) 485-3000 www.srpd.org FAX(415) 485-3043

Division Commander Comments

DATE:

TO: Chief

FROM: Captain

I have reviewed the administrative investigation prepared by Sergeant XX and find that the above investigation is comprehensive and complete. The allegations in this matter are that Officer XX failed to properly investigate a domestic violence incident, failed to complete a police report, neglected his duty, engaged in unsatisfactory work performance, failed to record statements, and failed to accommodate a Limited English Proficient individual.

INVESTIGATIVE SYNOPSIS:

This investigation was initiated following a domestic violence related call for services on XXXXX. Officer XX and Ofc. XX XXX responded to a residence in San Rafael on the report of an unwanted subject. Ofc. XX was the primary officer, thus he was responsible for the investigation and disposition of the case. Ofc. XXX was the cover officer. During the investigation, the victim told Ofc. XX

On August 12, 2017, the victim came to the San Rafael police station regarding the incident on 08/08/17 to complain that a police report was not initiated during the original incident. She met with Ofc. Puccetti, who subsequently conducted a domestic violence investigation. Based on the interviews of the victim, witness, and suspect, Ofc. X found probable cause to arrest the suspect for .

On 10/19/17, the suspect pled guilty to xxx and was sentenced to three years supervised probation.

CONCLUSIONS:

The investigation establishes the following conclusions and violations of policy:

City of San Rafael Police Department Policy §319.4(b) *When practicable, officers should obtain and document statements from the victim, the suspect, and any witnesses, including children, in or around the household or location of occurrence.*

Ofc. XX failed to complete **SUSTAINED**

City of San Rafael Police Department Policy §319.4(j) *Domestic Violence Investigation: officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred.*

SRPD IA Form #IA-06



SA RAFAEL POLICE DEPARTMENT

1375 FIFTH AVENUE, SAN RAFAEL, CA. 94901

DAVID C. SPILLER, POLICE CHIEF

OFFICE (415) 485-3000 www.srpd.org FAX(415) 485-3043

Based on the victim and witness statements, **XX = SUSTAINED**

XX failed to complete a police report related to this incident and he did not make an arrest when probable cause existed to make an arrest for domestic violence - **S STAINED**

City of San Rafael Police Department Policy *CONDUCT-Any other on-duty or off-duty conduct which any member knows or reasonably should know is unbecoming a member of the department, is contrary to the good order, efficiency, morale, or tends to reflect unfavorably upon this department or its members.*

Because Q.fu., XX did not initiate a police report or make an arrest during his initial contact, his failure to document ... = **SUSTAINED**

RECOMMENDATIONS:

On **** Ofc. XX was issued a 30-hour suspension in the form of a pay reduction. Given that this pay reduction was for unsafe driving, it was not taken into consideration by me for progressive discipline purposes when making my discipline recommendation in this case. I am recommending a 60-hour suspension which should come in the form of a reduction of pay. Additionally, I am recommending that Ofc. XX be removed from the Crisis Negotiations Team and as an Explorer Advisor.



SAN RAFAEL POLICE DEPARTMENT

1375 FIFTH AVENUE. SAN RAFAEL. CA. 94901

DAVID C. SPILLER. POLICE CHIEF

OFFICE (415) 485-3000 www.srpd.org FAX(415) 485-3043

To: [!Blank]
From: [!Blank]
Subject: SB2 Reporting Requirements
Date: [!Blank]

As of January 1, 2023, law enforcement must notify the Commission on Police Officer Standards and Training (POST) of allegations of Serious Misconduct within ten (10) days of the allegation being made, even when the investigation has not been completed. Once the investigation has been completed, law enforcement must update POST with the investigative outcome. PC 13510.8 describes "Serious Misconduct" in more detail. In essence, there are nine categories where law enforcement agencies must notify POST

1. Dishonesty - including misleading crime reports, statements, evidence
 2. Abuse of Power - including intimidation, knowingly make false arrest
 3. Physical abuse - excessive or unreasonable use of force
 4. Sexual Assault - as described in 832.2(b)(1), C
 5. Demonstrating bias - failure to carry out duties in a fair and unbiased mann.ec
 6. Acts that violate the law - crimes egregious in nature
 7. Participation in a law enforcement gang - multiple officers' on-duty behavior violates rights of other employees or community members
 8. Failure to cooperate with an investigation into potential police misconduct
 9. Failure to intercede - being present and observing unnecessary force
- On 05/25/23, in accordance with the law, the San Rafael Police Department notified POST about an event you were involved in that met one of the above criteria.
- On 05/25/23, in accordance with the law, the San Rafael Police Department notified POST that the investigation had been completed and the finding was (If left blank, the investigation is on-going)

- | | |
|--|----------------------------------|
| <input type="radio"/> Sustained | <input type="radio"/> Unfounded |
| <input type="radio"/> <u>Not-Sustained</u> | <input type="radio"/> Exonerated |

If you have any questions, you may contact Personnel Services Lieutenant Scott Eberle.

If you'd like more information on Senate Bill 2, please go to the POST website, Senate Bill No. 2 webpage (<https://postca.gov/sb-2>).



SAN RAFAEL POLICE DEPARTMENT

1375 FIFTH AVENUE. SAN RAFAEL. CA. 94901

DAVID C. SPILLER, POLICE CHIEF

OFFICE (415) 485-3000 www.srpd.org FAX(415) 485-3043

1±1

To: Officer*****
From: Chief
Subject: Notice of Administrative Leave

Date: August 18, 2022

This letter is to advise you, Officer*****, that I am placing you on paid Administrative Leave and suspending your peace officer powers as of **CATE**, pending the final disposition of an internal investigation which will be conducted by the San Rafael Police Department.

You shall immediately surrender your Department issued identification card, badge, electronic access keycard, building keys, and firearm.

You are not allowed in the Public Safety Building, located at 1375 5th Avenue, San Rafael or other San Rafael police facilities unless escorted by a department manager or supervisor.

Under the conditions of this emergency suspension, you are to obey all local, State, and Federal laws, City Rules and Regulations, and the San Rafael Police Department Code of Conduct.

Additionally, you are required to be available for daily contact through your Department issued cell phone at*****, Monday through Friday, 9 am to 5 pm, with Lieutenantxxx. Lieutenant xxx will be responsible for coordinating any exchange of information with you while you are on paid administrative leave. Lieutenant,..**** will serve as a secondary contact for you here at the police department in case Lieutenant xxx is not available and immediate contact is needed. His contact phone numbers are 415-**** or ****/t.*****.

David Spiller
Chief of

Date

xxx Date
Human Resources Director

Police Officer

Date

Formal Internal Investigation Report Sample Memorandum

(Template)

To:xxxx
Chief of Police

From: Captain
XXXXXXXXXX
Officer in Charge Assignment

Date: DATE TURNED IN

Subject: INVESTIGATION OF A COMPLAINT AGAINST PERSONNEL

EXECUTIVE SUMMARY

- 3-4 Paragraphs summarizing the incident.

MEMBER:

Named Member

TYPE OF COMPLAINT: (List the appropriate title)

- Alleged Violations

Conduct Unbecoming an Officer Neglect of Duty
Unwarranted Actions

CASE NUMBER:

IA 2020-XXXX

DATE, TIME PLACE OF OCCURRENCE:

When and where it happened

INVESTIGATOR:

Supervisor XXXXX or Sergeant XXXXX #1111 (Put your name here)

Recommendation as to Disposition Classification (Findings):

THIS SHOULD BE ON IT'S OWN PAGE, one page per subject employee

Based on the information obtained in the course of this administrative investigation, I recommend the disposition and classification of the complaints (*Employee*) to be as follows:

San Rafael Police Department Policy:

- **xxxx(e) "UNFOUNDED"** Unauthorized possession of, loss of or damage to
Department property or the property of others
or
endangering it through unreasonable
carelessness or
maliciousness.

- **xxxxx(j) "SUSTAINED "** Wrongfully loaning, selling, giving away or
Appropriating any Department property for the
personal use of the employee or any
unauthorized person(s).

- **xxx.(n) "NOT SUSTAINED"** Work related dishonesty, including attempted
or
actual theft of Department property, services
or the property of others.

Memorandum of Understanding with the City of San Rafael and the San Rafael POA:

- **23.2(14) "UNFOUNDED"** Dishonesty

- **23.2(16) "UNFOUNDED"** Use of City equipment, supplies or
identification (e.g.,
badges) for any reason other than for official
City business.

Sec. 2

IDENTIFIED/INVOLVED PARTIES:

Member:

Officer John Doe #1234

Complainant:

(If the complaint is internally generated, simply list "SRPD." If external, list the name of the complainant and their contact info.) Example:

Sarah Smith 1423 34th St.
San Rafael, CA 94122
(415) 555-5556

Witness:

Officer David Brown #2222

Officer Jane Johnson #3333

Mr. Paul Wilson
Citizen / San Rafael Resident 1234 California St.
San Rafael, CA, 94131
(415) 555-5555

Sec. 3

INVESTIGATION CHRONOLOGY:

List the time/dates of the investigative steps you took, i.e.:

4/15/20 at 1400 hrs: I was assigned this case for investigation by Captain XXXXX. The file I received included the following documentation: XXXXXXXX

4/15/20 at 1500 hrs: I reviewed the case file and included documents.

4/15/20 at 1600 hrs: I conducted research through HRMS to determine **if Officer** Doe was working on 3/15/20. HRMS showed Officer Doe working from

1200-2200 hrs. I printed the HRMS report and included it in the case file.

4/16/20 at 1000 hrs: I called Complainant Sarah Smith and conducted a recorded interview.

4/16/20 at 1100 hrs: I called Witness Paul Wilson and conducted a recorded interview.

4/17/20 at 1300 hrs: I called Witness Officer Jane Johnson and conducted a recorded interview. Etc.

(This section is meant to simply keep a chronological record of the steps you took, and when you took them. Do not document the actual content of conversations, as that comes later in the investigative findings section.)

Sec. 4

INVESTIGATIVE FINDINGS:

(Your investigation, in a narrative format. This section is meant to summarize the steps you took, and what information was provided to you. It should be a big picture summary of what the allegations were, what each of the Witnesses and Members said, and a description of any evidence you discovered. Include any other relevant information here. Write this section like you are writing a police report or a memo. Include any information to prove or disprove the allegation.)

Example:

On 4/15/20 at 1400 hrs., I was assigned this case for investigation by Captain XXXXX. Captain XXXXX advised me that I was to complete a station level investigation regarding a complaint received at, and subsequently forwarded to me.

Captain XXXXX provided me with a case file containing the following documents:

1. Case Assignment Memo
2. Report Summary
3. Notification of Investigation Form
4. Handwritten letter signed by Sarah Smith
5. SRPD Parking Citation #123456789

I reviewed the documents and determined that Complainant Sarah Smith had made a Complaint against Officer John Doe related to rudeness and a parking

citation. The Complaint consisted of a handwritten letter mailed to Records, and was related to a parking citation issued by Officer Doe.

I took the following actions during the investigation of this incident:

Review of CAD/RIMS Record of Officer John Doe

I reviewed the xxx record for Officer Doe. The record showed xxxxxx

Review of Complaint Letter

I reviewed the letter and observed the following: XXXXX

Review of Citation #123456789

- I reviewed the citation provided by the Complainant. It appeared to show that the citation was issued by Officer Doe on XXXXX....

Additional Follow-Up Conducted

I learned that Officer Doe had recorded the initial incident with his BWC. I reviewed the BWC which showed the following: XXXXXX

Summary of Interview with Complainant Sarah Smith

On 4/16/20 at 1000 hrs., I conducted a recorded telephonic interview with Complainant Sarah Smith. Smith related to me the following: XXXXX

Summary of Interview with Witness Paul Wilson

On 4/16/20 at 1100 hrs., I conducted a recorded telephonic interview with Witness Paul Wilson. Wilson related to me the following: XXXXX

Summary of Interview with Witness Officer Jane Johnson

XXXXXXXX

Summary of Interview with Named Officer John Doe

XXXXXXXX

(Continue in this manner itemizing and summarizing the various steps conducted until you have addressed all of the relevant information.)

Sec. 5

STATEMENTS:

All Statements summarized in "Investigative Findings" See audio recordings and Memorandums for further

List the people here that you interviewed. Include contact information.

Sec. 6

CONCLUSION:

Allegation #1:

In regards to the allegation that Officer Doe violated Department General Order 2.01, Rule 14 when he was alleged to have been discourteous to complainant when issuing a parking citation:

SUSTAINED

Department Lexipol Policy 320 Standards of Conduct - When acting in the performance of their duties, while on or off duty, members shall treat the public with courtesy and respect and not use harsh, profane or uncivil language. Members shall also address the public using pronouns and titles of respect appropriate to the individual's gender identity as expressed by the individual. When requested, members shall promptly and politely provide their name, star number and assignment.

Summary:

On XXXXX date at XXXXX time, SRPD received a complaint from Sarah Smith stating Officer Doe yelled at her, accused her of parking in a red zone, and refused to let her move her vehicle. Smith alleged Officer Doe wrote her a ticket which he then threw at her. Through the course of the investigation I interviewed two witnesses and observed Body Worn Camera footage, which produced evidence that:

Both parties appeared animated during the dispute;
Officer Doe used harsh language, including calling Sarah Smith an "idiot"
Officer Doe did in fact throw her ticket at Sarah Smith
This action brought discredit to the Department.

Therefore, this allegation should be deemed Sustained.

Allegation #2:

In regards to the allegation Officer Doe violated Department Bulletin 19-049 by hanging up on the complainant who called on the phone:

****Not Sustained****

Department Bulletin 19-049: San Rafael Police Department sworn and non-sworn members are reminded that they shall be courteous at all times. Often the public's first contact with the Department is by telephone. When answering the phone, members shall identify their unit, station or bureau, and give their rank and name. Members shall then inquire how they may be of service.

Summary:

On XXXXX date at XXXXX time, SFPD received a complaint from Sarah Smith stating she called XXXXX Station after receiving a citation from Ofc. Doe. Ofc. Doe came to the phone, and when the complainant stated she was the person who received a ticket from Officer Doe, Officer Doe hung up the telephone. There were no independent witnesses to this complaint and Officer Doe denied the action. There was insufficient evidence to prove or disprove the allegation.

Therefore, this allegation should be deemed Not Sustained.

Investigated By:

Approved By:

Sgt XXXXX #1234 Date:

Captain XXXXX #6789 Date:

RECOMMENDATION:

It is recommended that discipline, if deemed necessary, be imposed according to Department policy and guidelines.

Sec. 8

ATTACHMENTS:

- A. Chronological**
- B. Documentation (IA Report Summary)**
- C. List all attachments here...**

Informal Internal Affairs Investigations Procedures

A complaint is determined to be an INFORMAL when the allegation, if sustained, would seemingly result only in a memo that goes into their supervisory file but is purged within one year (Also referred to as a 3 X 5). The Lieutenant will normally assign these complaints to the supervisory level where a sergeant will be assigned the case.

Informal Complaint Received

Every Informal complaint will be accepted in accordance with Lexipol Policy 1011 (The same as a Formal complaint)

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. The receiving member shall obtain contact information sufficient for the supervisor to contact the complainant and enter the complaint into the *Internal Complaint Tracking Form*, which is the log that tracks all incoming complaints. After completing the *Internal Complaint Tracking Form* the receiving member shall direct the complaint to the supervisor. If the supervisor is not immediately available the receiving member shall notify the supervisor of the complaint as soon as reasonably possible. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs, or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of the complaining party's statement at the time it is filed with the Department (Penal Code § 832.7).

Once you are assigned an informal complaint, read the complaint thoroughly and then retrieve any reports or supporting documents associated with the case. Contact your Lieutenant for a discussion of the issues, and to develop an investigative plan.

Since an Informal complaint, if sustained, would not result in anything more than a 3 X 5, the named employee is not entitled to representation during the interview. Additionally, employees **will not** be advised of either the Miranda advisement or the Lybarger and witness admonishments. Employee interviews will not be recorded either. Note-taking is permissible and recommended.

The investigation of an informal complaint differs from a formal complaint only in respect to how employee interviews are conducted, and the reporting format of the final investigative product. Regardless of whether a complaint is classified as formal or informal, your diligence in pursuing the facts of the complaint remains the same.

Informal complaint checklist

1. Read the complaint and retrieve connecting documents.
2. Confer with your Lieutenant
3. Begin and maintain an investigative log.
4. Gather all evidence in the case – photos, records, etc.
5. Interview the complainant and clarify the issues alleged.
6. Schedule interview(s) with witnesses.
7. Schedule interview(s) with the named officer(s).
8. Summarize interviews and begin analysis of complaint(s) based upon facts known to you.
9. Call your assigned Lieutenant anytime for questions or assistance.
10. Forward your completed report to the Lieutenant for review.

Informal Investigations Reporting Template San Rafael Police Department

- **Nature of Complaint:**

- **Complainant Summary:**

- **Named Personnel:**

- **Witnesses:**

- **Complaint Background:**

- **Investigator's log:**

- **Interviews:**

- **Conclusions:**

Public Safety Officers Procedural Bill of Rights Act

Government Code Sections 3300-3312

3300- Title

This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301- Definition; Legislative findings and declaration

For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision ©, 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

3302- Political activity; Membership on school board

(a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

3303- Investigations interrogations; conduct; conditions; representation; reassignment

When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the

interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3304-Lawful exercise of rights; insubordination; administrative appeal

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure. Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefore and an opportunity for administrative appeal. For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons." Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This

one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

- (1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
- (2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
- (3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
- (4) If the investigation involves more than one employee and requires a reasonable extension.
- (5) If the investigation involves an employee who is incapacitated or otherwise unavailable.
- (6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.
- (7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
- (8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.
 - (e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.
 - (f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.
 - (g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:
 - (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
 - (2) One of the following conditions exist:

- (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.
- (B) The evidence resulted from the public safety officer's predisciplinary response or procedure.
- (h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

3304.5- Administrative appeal

An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

3305- Comments adverse to interest; personnel files; opportunity to read and sign; refusal to sign

No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

3306- Response to adverse comment in personnel file; time

A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

3306.5- Inspection of personnel files; request for correction of file; time

(a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefore by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons

supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

3307-Polygraph examination; right to refuse; effect

(a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be

entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

3307.5-Use of photograph; penalties

(a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

3308-Financial disclosure; right to refuse; exceptions

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law

or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

3309-Search of locker or storage space; consent; search warrant

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

3309.5-Local public safety officers; applicability of chapter; jurisdiction; remedies

(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.

(c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(d) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of alike or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the parties' attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding

these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

3310-Procedures of public agency providing same rights or protections; application of chapter

Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

3311-Mutual aid agreements; effect of chapter upon

Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

3312-American Flag; pins

Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

- (a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.
- (b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.
- (c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

POLICE ADMINISTRATIVE INVESTIGATIONS

Presented by: Lt. Todd Berringer





1. INTRODUCTION
2. LEGAL FRAMEWORK
3. POLICIES AND PROCEDURES
4. RECORDS RETENTION AND ACCESS
5. CONCLUSIONS

INTRODUCTION

- What are Police Administrative Investigations
- Importance in Law Enforcement
 - Integrity of the Department
 - Reaffirms Police Legitimacy and Trust
 - Objectivity, fairness and justice
- Purpose of the Presentation
 - Overview of the complaint process and steps in an investigation





LEGAL FRAMEWORK

- California Penal Code 832.5: Peace Officer Personnel Records
- California Government Code 3300: Peace Officer Bill of Rights
- Role of California Commission on Peace Officer Standards and Training (POST)
- Overview of Legal Rights and Responsibilities (Administrative v. Criminal)
- San Rafael Police Department Lexipol Policy 1011
- Criminal misconduct: US Constitution (5th Amendment – Self-incrimination);
 - No 5th Amendment protections in administrative investigations

POLICIES AND PROCEDURES



- Internal Affairs Units: Roles and Responsibilities
 - Internal Affairs Investigation Manual
- Handling of Complaints: Reporting and Documentation
- Investigation Process: Steps and Best Practices, Generally must be completed within 1 year
- Disciplinary Actions: Guidelines and Procedures
 - Disposition: Unfounded, Exonerated, Not Sustained, Sustained
 - Standard: Preponderance of the Evidence
 - Types of discipline:
 - INFORMAL: Oral counseling, Documented Oral Counseling, Letter of Reprimand, Training, Performance Improvement Plan
 - FORMAL: Paid Administrative Leave, Suspension, Demotion, Performance Improvement Plan, Termination, Decertification (SB2)
- Appeal - Skelly Hearing (Formal)
- Arbitration (Formal)

SENATE BILL 2 AND DECERTIFICATION

- California Commission on Peace Officers Standards and Training will accept complaints on officers: <https://post.ca.gov/public-complaints>
- Decertification or Suspension of a peace officer
- Qualifying offenses for serious misconduct



RECORDS RETENTION & ACCESS

- Police Personnel Records are confidential
- Administrative Investigations are retained after the final disposition + 5 years for civilian complaints WITHOUT Sustained findings (832.7 PC)
- Administrative Investigations are retained after the final disposition + 15 years for civilian complaints WITH sustained findings (832.7 PC)
- Internally generated complaints are retained for 4 years (2 California Code of Regulations 11013(c), Government Code 12946, 12960, 34090)
- Informal complaints are retained for one year and are purged 60 days after employee's annual evaluation





CONCLUSION

- Recap of Key Points
 - Due process, Police Officer Bill of Rights, Law/Policy
- Importance of Adhering to Law and Policies
 - Statue of Limitations, procedural issues, compelled statements, criminal prosecution