
ADMINISTRATIVE INVESTIGATION PROCEDURES

10100.1 PURPOSE

These procedures provide guidelines for conducting administrative investigations regarding the conduct of employees of the Santa Ana Police Department. These procedures shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of an SAPD employee in the normal course of duty, by a supervisor or any other SAPD employee, nor shall these procedures apply to a criminal investigation.

10100.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or an SAPD employee of the Internal Affairs Unit, the following applies to SAPD employees covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303 et seq.).

Prior to the interrogation of an accused SAPD employee during an investigation, he/she will be provided with an Internal Affairs Memorandum titled "ADMINISTRATIVE INVESTIGATION-NOTIFICATION OF INTERROGATION," which will be completed by the sergeant assigned the investigation (Attachment A). An Internal Affairs supervisor, or the supervisor conducting the investigation, will serve the memorandum personally and the SAPD employee will acknowledge receipt of the document in writing.

The Notice shall provide the SAPD employee with the following information:

- (a) The date and time the interrogation shall be conducted.
- (b) The nature of the investigation including the date and time of the incident in question, the name, rank and commanding officer in charge of the investigation, the interviewing officers and all other persons to be present during the interrogation, a general description of the act(s) or omission(s) giving rise to the investigation, and the possible Department policies that may have been violated. The information included should allow a reasonable person to understand the nature of the investigation
- (c) Inform the SAPD employee that the complete interrogation shall be recorded and the SAPD employee has the ability to also record the interrogation.
- (d) If prior to or during the interrogation of an SAPD employee, it is deemed that the SAPD employee may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights. If this information is known prior to the SAPD employee's interrogation, the Notice of Interrogation shall include said advisement.
- (e) The SAPD employee has 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.

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10100.2.1 ADMINISTRATIVE INVESTIGATION INTERROGATION

- (a) Interrogation of an accused SAPD employee shall be conducted during reasonable hours and preferably when the SAPD employee is on-duty. If the SAPD employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the accused SAPD employee, interrogation of an SAPD employee shall be at the Santa Ana Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused SAPD employee.
- (d) All interrogations shall be for a reasonable period and the accused SAPD employee's personal needs should be accommodated.
- (e) No accused SAPD employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (f) Any accused SAPD employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - (a) The accused SAPD employee should be given an order to answer questions in an administrative investigation that might incriminate the SAPD employee in a criminal matter only after the SAPD employee has been given a Lybarger advisement. Administrative investigators should consider the impact that compelling a statement from the accused SAPD employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the agency in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 - (a) No information or evidence administratively coerced from an accused SAPD employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (g) The interviewer shall record all interrogations of SAPD employees and witnesses. The accused SAPD employee may also record the interrogation. If the accused SAPD employee has been previously interrogated, a copy of that recorded interrogation shall be provided to the SAPD employee prior to any subsequent interrogation.
- (h) All accused SAPD employees subjected to an interrogation that could result in discipline have the right to have an uninvolved representative present during the interrogation. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interrogated.
- (i) All accused SAPD employees shall provide complete and truthful responses to questions posed during an interrogation.
- (j) No accused SAPD employee may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

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- (k) If at any time should the witness SAPD employee request representation, the interrogation will be stopped and he/she will be given an opportunity to speak with a representative at that time. The witness SAPD employee will be given a reasonable amount of time under the circumstances to speak with a representative. If, after the consultation with a representative, the employee still desires representation, the SAPD employee will be given a reasonable period of time to obtain such representation and return for the interrogation. In most cases, a "reasonable" period of time will be 24 hours. No negative action will be taken against a witness SAPD employee for requesting a representative.

10100.2.2 SUBSEQUENT INTERROGATION

If an additional interrogation is required of any SAPD employee, in a reasonable time prior to the subsequent interrogation(s), the SAPD employee will be provided a Notice of Interrogation and will be informed if the nature and scope of the investigation has changed or been expanded.

In a reasonable time prior to any subsequent interrogation of an SAPD employee, or when further proceedings are being contemplated, the SAPD employee shall be given a copy of the recording of the prior interrogation(s), and 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 SAPD employee's personnel file. The SAPD employee being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

10100.2.3 ADMINISTRATIVE INVESTIGATION FORMAT

Investigations of personnel complaints shall be thorough, complete and essentially follow this format when a memorandum is required to document the investigation:

- (a) To: Chief of Police via the affected Bureau Commander
- (b) Date: The date the administrative report was completed
- (c) From: Supervisor/manager's name and badge number
- (d) Subject (Re): Complaint/internal investigation involving (employee's name and badge number)
- (e) Summary: Summarize the incident, the allegations and the conclusion (sustained, not sustained, etc.)
- (f) Focus SAPD Employee(s): List the name(s) of the employee(s) who are the focus of the investigation, along with their badge number and rank
- (g) Witness SAPD Employee(s): The same information as listed for focus employees
- (h) Complainant(s): Full name and prior complaint history. The complainant's date of birth, address, telephone number, business name, business address, business telephone number should be included in the corresponding Blue Team entry

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- (i) Witness Members of the Public: Full name. His/her date of birth, home, business address, and telephone numbers should be included in the corresponding Blue Team entry
- (j) Evidence: Such as photographs, tape recordings, sketches, medical reports, legal documents, arrest reports, etc. These evidence items, as well as others pertinent to the investigation, shall be listed and attached to the original report that is to be submitted to the Chief of Police. In alleged criminal matters, evidence shall be handled as in other criminal cases, indicating chain and location of evidence. Interviews of complainants, employees, and witnesses shall be audio recorded and processed with the completed investigation, and shall be retained by Internal Affairs
- (k) Investigations: The report should be written in the first person, in active voice when possible (i.e. "Jones told me he ordered the items."), and in the following format:
 - (a) The report will be a comprehensive summary, although not a complete transcription, of all relevant information developed through the investigation
 - (b) When summarizing a statement or inferring something from it, use extreme care to be absolutely accurate, and include quotes when necessary to portray the exact meaning of the statement
 - (c) The investigation will be written in chronological order
 - (d) The last name of the complainant, witness or employee should be prefaced above their statement. For example: Interview of Mike Jones - November 18, 2004, 1400-1600 Hours. In the interview summary, state the location of the interview
 - (e) Occasionally and to avoid confusion, preface the last names of members of the Department with their title (i.e. Officer, PSO, Cadet, Detention Officer, etc.)
 - (f) When summarizing a part of the investigation that is not an interrogation, preface the section with the date the investigative action took place, followed by "Investigation Continued (Date)"
 - (g) There should be no conclusions or opinions in the body of the investigative report. This portion is reserved for facts, statements, description of evidence, and the observations of the investigator regarding demeanor of individuals, state of the evidence, etc.
- (l) Conclusion: This is the portion of the report where the investigator ties the entire investigation together, reaching sound, thorough, and well-supported conclusions on each of the charges. Identify each alleged violation by departmental policy/order number, section and subsection, and name.

10100.2.4 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

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In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

10100.2.5 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

10100.3 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

10100.3.1 INTERNAL AFFAIRS COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Internal Affairs Commander shall review the entire investigative file and complete a Disposition Memorandum that includes recommendations regarding the disposition of any allegations.

Each administrative investigation shall be classified with one of the following dispositions:

1. **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.
2. **Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.
3. **Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the SAPD employee.
4. **Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

10100.3.2 DIVISION COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Division Commander of the involved member shall review the entire investigative file, the member's personnel file, and any other relevant materials. The Division Commander shall complete a Cover Memorandum and forward it to the Bureau Commander.

Prior to forwarding to the Bureau Commander, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any Cover Memorandum to the Bureau Commander, the Division Commander shall include all relevant materials. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

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10100.3.3 BUREAU COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Bureau Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Bureau Commander shall make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Bureau Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Bureau Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

10100.3.4 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Bureau Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police, in his/her sole discretion shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the SAPD employee with a pre-disciplinary procedural due process hearing () by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the SAPD employee with:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 - (a) Upon a showing of good cause by the SAPD employee, the Chief of Police may grant a reasonable extension of time for the SAPD employee to respond.
 - (b) If the SAPD employee elects to respond orally, the presentation (Skelly) may be recorded by the Department. Upon request, the SAPD employee shall be provided with a copy of the recording.

Once the SAPD employee has completed his/her response or if the SAPD employee has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the SAPD employee and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

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10100.3.5 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(e)).

10100.3.6 NOTICE REQUIREMENTS

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(e)).