

McKinney Police Department General Orders

105.001

Subject Personnel Complaints Investigations	
Reference Professional Standards	
Effective Date January 17, 2006	Revised Date September 1, 2015
Related General Orders 105.002	Related SOPs
TPCA Recognition Program Standards 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 2.10	CALEA Standards 52.1.1, 52.1.2, 52.1.3, 52.1.4, 52.1.5, 52.2.1.a-b, 52.2.2, 52.2.3, 52.2.4.a-c, 52.2.5, 52.2.6.a-e, 52.2.8
Related Public Safety Software Information	Comments Previous 501.00, Require Council Approval for modification

I. PURPOSE

This order establishes the criteria, expectations, guidelines, responsibilities, and fundamental procedures for accepting, processing, and investigating complaints lodged against employees of the McKinney Police Department (MPD). This order defines provisions applicable only to investigations and dispositions regarding Administrative Inquiries and Administrative Investigations.

II. POLICY STATEMENT

- A. It is the policy of the MPD to accept and investigate all allegations of employee misconduct, violations of City policies, and/or violations of the department’s written directives received from any source outside or inside the department. The department will initiate this review to promote a fair, prompt, and impartial resolution of all complaints made against employees. A fair and prompt review of complaints serves both the professional interest of the MPD – establishing and maintaining public trust, and the general interest of the community in deterring police misconduct. Further, it is the policy of the MPD to pursue criminal charges against individuals who file **false** complaints against employees of the MPD.

- B. Nothing written or implied in this order is intended to restrict the normal duties and obligations of supervisors. Supervisory inquiries may be completed by the immediate supervisor, or designee, for employees involved in incidents requiring Response to Resistance Reports, Pursuit Reports, Fleet Crash Reports, Damaged/Lost City Property Reports, and other inquiries as ordered by the Chief of Police or designee. Supervisors must ask fact finding questions to properly evaluate, monitor, train, and professionally develop employees under their supervision. Such fact finding questions do not constitute an investigation. In the event that an supervisory inquiry or other supervisory observation concludes potential policy violations, the employee will be given notice of the complaint and an internal affairs investigation will be initiated (unless the supervisory inquiry determined “No additional action(s) recommended” or other corrective measures are determined to be the appropriate course of action). 52.2.1.a

III. DEFINITIONS

- A. **Administrative Inquiry:** An informal review of an incident or occurrence prepared for the Chief of Police or designee. The review should indicate whether policy, training, equipment, or disciplinary issues should be addressed. The review could also involve more than one incident.
- B. **Compelled Interview:** An involuntary interview, whereby the employee is compelled to respond to job related questions, or face disciplinary sanctions, including dismissal.
- C. **Complaint:** An allegation of misconduct, malfeasance, nonfeasance, or a violation of law or Department directives made against any member of the Department, or against the Department.

This does not include a complainant's disagreement with the application of law which is properly decided in a court of law.

- D. **First Line Employee:** Employees (sworn and non-sworn) of the MPD who are not classified as supervisors.
- E. **Garrity:** A decision by the U.S. Supreme Court regarding a police officer's constitutional right to self-incrimination under the 14th Amendment, which concluded "that police officers are not relegated to a watered down version of constitutional rights", also known as the Garrity Warning. (Garrity v. New Jersey, 385 U.S. 483 and Gardner v. Broderick, 392 U.S. 273)
- F. **Investigate:** For the purpose of this order, investigate means to conduct either an Administrative Inquiry or Internal Affairs (IA) Investigation.
- G. **Internal Affairs Investigation:** A formal, detailed investigation of alleged misconduct, violation of law or Agency directives.
- H. **Legal Counsel:** A lawyer hired to advise and represent an individual regarding legal matters.
- I. **Malfeasance:** Any wrongful conduct that affects, interrupts, or interferes with the performance of official duties; performance of an act that a person ought not do.
- J. **Misfeasance:** The improper performance of some act which a person may lawfully do.
- K. **Nonfeasance:** Nonperformance of some act which a person is obligated or has responsibility to perform; the omission of an act which a person ought to do.
- L. **Office of Internal Affairs (OIA):** The designated unit responsible for coordinating IA Investigations.
- M. **Personal Representative: A non-participating employee of MPD.**
- N. **Special Examination:** For the purpose of this order, Special Examination means an administrative investigative tool to include, but not limited to:
 - 1. Intoxilyzer or other instrument used to determine the presence of an intoxicant by the means of a breath specimen; 52.2.6.a

2. Providing DNA; 52.2.6.a
 3. Submitting a specimen of blood or urine; 52.2.6.a
 4. Polygraph Examination; 52.2.6.e
 5. Alcohol and drug testing; 52.2.6.a
 6. Photograph lineup for identification; 52.2.6.b, c
 7. Fitness for duty examinations to include (behavioral) examinations, and 52.2.6.a
 8. Submission of financial disclosure statements 52.2.6.d
- O. **Substantial Evidence:** Substantial evidence is defined as such evidence that a reasonable person might accept as adequate to support a conclusion of fact. It is that quality of evidence necessary for a court to affirm an administrative decision.
- P. **Supervisor:** For the purpose of this general order, a supervisor is an officer with the rank of Corporal or higher, or a civilian (non-sworn) employee designated as a supervisor.

IV. COMPLAINTS – CATEGORIES & CLASSIFICATIONS

The Department has two categories of complaints – formal and informal.

- A. Formal complaints are those that require an investigation, either an Administrative Inquiry and/or an IA Investigation. 52.2.1.b
1. Formal complaints are classified as follows:
 - (a) Class I Complaints: Allegations regarding violations of federal, state, or local laws, use of force, or incidents of potential public concern / outcry. Class I incidents include, but are not limited to:
 - (1) Serious misconduct or criminal misconduct.
 - (2) Discharge of a firearm, other than pre-approved discharges related to firearms training.
 - (3) Complaints in the form of a notice of claim to the City, if no specific allegation is asserted, the notice of claim may be classified as a Class III.
 - (4) Complaints regarding excessive force to include, but not limited to, the use of:
 - (i) Control techniques;
 - (ii) Impact weapons;
 - (iii) Chemical agents;
 - (iv) ECDs; and
 - (v) Firearms.
 - (5) An allegation of sexual harassment, racial profiling (biased policing), or other civil rights violations.

- (6) In-custody deaths
- (7) Death or serious bodily injury of any person as a result of any police action.
- (b) Class II Complaints: Allegations regarding violations of departmental orders (written/verbal), often referred to as “conduct and behavior” complaints. Class II complaints include, but are not limited to:
 - (1) Allegations of rudeness / discourtesy.
 - (2) Allegations of inadequate / incomplete case investigation.
 - (3) Allegations of improper tactics / procedures.
- (c) Class III: Allegations of employee misconduct that are made by individuals who wish to remain anonymous and /or do not wish to complete and submit a signed Complaint Affidavit.
 - (1) The Chief of Police or designee may authorize an Administrative Inquiry for the purpose of determining facts to either disprove or support the allegations. The Administrative Inquiry is conducted as matter of due diligence.
 - (2) Depending on the conclusion of an Administrative Inquiry, Class III complaints may lead to an IA Investigation.
- 2. Informal complaints are complaints that do not require an investigation.
 - (a) In these matters, the complainant is satisfied with the decision reached by the first line supervisor who accepted the complaint.
 - (b) Informal complaints are documented in the approved public safety software.
 - (c) Documenting informal complaints serve as permanent record that the complainant was satisfied with the resolution and that no further action is required.

V. COMPLAINT AFFIDAVIT

- A. The official Complaint Affidavit for the MPD shall be reviewed annually and updated as needed to ensure that it meets the requirements of all related state and/or federal laws, codes, and related regulations.
- B. The Complaint Affidavit shall be published in both English and Spanish.
- C. The Complaint Affidavit shall include clear instructions for properly completing and submitting the affidavit to an appropriate representative of the MPD.
- D. The Complaint Affidavit shall articulate criminal penalties for filing false reports to the MPD.
- E. The Complaint Affidavit will provide a section for the complainant’s signature and a section for the affidavit to be notarized.

- F. Complaint Affidavits shall be made available to the public and the employees of the MPD through: 52.1.4
1. Police personnel;
 2. Designated public facilities; and
 3. Authorized Websites (Internet and Intranet – as City technologies allow).

VI. ACCEPTING / FILING COMPLAINTS 52.1.1

- A. Complaints may be received by any member of this department in person, over the telephone, in writing, and may be lodged anonymously or by any other means.
- B. Anonymous complaints or complaints from citizens who wish their names to be held in confidence will be accepted to determine if the need exists for a formal investigation to take place.
- C. Employees shall provide assistance to those who express the desire to lodge complaints against any employee(s) of this department. This includes but is not limited to:
1. Calling a supervisor to the scene to document the complaint;
 2. Explaining the agency's complaint procedures;
 3. Providing referrals to individuals and/or locations where such complaints can be made in person; or
 4. Explaining alternative means for lodging complaints, such as by phone or mail.
- D. Employees should utilize their chain of command to report complaints and/or violations.
- E. Employees may report complaints and/or violations directly to the Office of Internal Affairs if the violation involves a person within their immediate chain of command.
- F. Unless otherwise ordered by the Chief of Police or designee, any employee who gains knowledge of an alleged violation will immediately report the violation to their supervisor.
- G. A signed Complaint Affidavit must accompany formal complaints lodged against sworn members of the MPD. A notarized affidavit is preferred, but not required.
- H. An MPD Letter of Notification may serve as a Complaint Affidavit
- I. Personnel complaints **will not** be accepted more than thirty (**30**) days after the alleged incident, except for the following:
1. When the complaint involves a criminal violation, the criminal statute of limitations will prevail. However, such limitations will not prevent the Chief of Police from initiating an investigation and taking disciplinary action necessary to preserve the integrity of the department.

2. When the complainant can show good cause for not making a complaint within the specified thirty (30) days. This determination will be made by the Chief of Police.
 3. When otherwise authorized by the Chief of Police.
- J. Supervisors who receive questions and/or concerns from citizens regarding a dispute over guilt or innocence in the issuance of a traffic citation or subsequent to an arrest are to refer the complainant to the proper prosecuting entity.
- K. Procedures for lodging a complaint against a MPD employee will be maintained on the City of McKinney website. 52.1.4

VII. DOCUMENTING COMPLAINTS

- A. All complaints will be documented.
1. In this section, “documented” means: the supervisor shall record, at minimum, the following information in either the approved public safety software or on the approved departmental form:
 - (a) Date and time the complaint was made;
 - (b) Method the complaint was received;
 - (c) Type of complaint;
 - (d) Nature of the complaint;
 - (e) Complainant information to include:
 - (1) Name;
 - (2) Race;
 - (3) Sex;
 - (4) DOB;
 - (5) Age;
 - (6) Address; and
 - (7) Contact information to include:
 - (i) Phone numbers; and
 - (ii) Email address if available.
 - (f) Name of employee(s) alleged to have been involved with the complaint;
 - (g) Names and contact information for any alleged witnesses; and
 - (h) Any action taken by the supervisor in an effort to resolve the complaint.
- B. The receiving supervisor may attempt to resolve a complaint with a citizen by providing an explanation of departmental directives where applicable. Attempts to resolve complaints should be noted when documenting the complaint.

VIII. SUBMITTING COMPLAINTS TO THE OFFICE OF INTERNAL AFFAIRS (OIA)

- A. Informal complaints **do not** need to be submitted to the Office of Internal Affairs. These complaint records are stored within the appropriate module of the department's approved public safety software.
- B. Formal complaints will be submitted to the Office of Internal Affairs via the department's approved public safety software or on the approved form.

IX. THE OFFICE OF INTERNAL AFFAIRS (OIA)

A. Authority and Responsibility

1. The Office of Internal Affairs has the primary supervisory responsibility for the coordination and review of all Administrative Inquiries and IA Investigations. 52.2.1.b
2. The Chief of Police delegates authority to the Office of Internal Affairs for facilitating and conducting Administrative Inquiries and IA Investigations.
3. The Office of Internal Affairs will promptly report all formal complaints made against employees and volunteers of the MPD to the Chief of Police. (2.07) 52.2.2
4. The employee assigned to the Office of Internal Affairs has the authority to report directly to the Chief of Police. 52.1.3
5. Upon receipt of a complaint, the Office of Internal Affairs will conduct an initial determination on whether to assume the primary investigative responsibility for the complaint or refer the complaint to a first-line supervisor. A supervisor's investigation may be halted at any time and full investigative authority transferred to the Office of Internal Affairs, if more serious allegations of misconduct are discovered and/or at the direction of the Chief of Police. 52.2.1.a, b
6. The Office of Internal Affairs will contact the complainant, by phone or writing, and advise him/her that: 52.2.4.a
 - (a) The matter is under investigation; and
 - (b) The complainant will receive written notice of the final disposition of the investigation; and
 - (c) Provide the complainant with the opportunity to ask questions about the department's administrative investigative processes regarding complaints submitted by the public. (2.10)
7. At the direction of the Chief of Police, a first-line supervisor may investigate allegations against MPD employees that meet the criteria for Class II complaints. (2.06) 52.2.1.a
8. All complaints other than those delegated to a first line supervisor, will be investigated by the Office of Internal Affairs. (2.06) 52.2.1.b
9. The Office of Internal Affairs shall: 52.1.2

- (a) Maintain a database of all complaints generated internally and externally; (2.09)
 - (b) Maintain a central file for complaints in a secured area, kept in conformity with State law; (2.09)
 - (c) Conduct a regular audit of complaints to ascertain the need for changes in departmental directives or the need for departmental training;
 - (d) Maintain statistical and related information to identify trends involving all complaints of excessive force and abuse of authority;
 - (e) Review and analyze the data as provided by the Department's approved "Early Warning System"; and
 - (f) Provide the Chief of Police with an annual summary of complaints against employees and final dispositions. These summaries will be made available to the public or otherwise used at the discretion of the Chief of Police. (2.07) 52.1.5
10. The Office of Internal Affairs may recommend to the Chief of Police that a case be referred to the local District Attorney's office for prosecution. All allegations of criminal misconduct shall be referred to the CID.

X. ADMINISTRATIVE WARNING 52.2.5

- A. The Administrative Warning may be issued to all employees under the following circumstances to include, but not limited to:
 - 1. Prior to any interviews associated with an Administrative Inquiry;
 - 2. Prior to the commencement of an IA Investigation;
 - 3. Prior to complying with an order submit a blood, breath, or urine specimen;
 - 4. Prior to complying with an order to submit to a special examination; and
 - 5. Any other circumstances deemed appropriate by the Office of Internal Affairs.
- B. The Administrative Warning shall be in a written format.
- C. The Garrity Warning will be a part of the Administrative Warning.
- D. The Administrative Warning will serve as official notice to the employee that his/her statements (written and verbal) are compelled.
- E. The Administrative Warning will serve as notice that the employee will be allowed to review MPD documents and related media respective to the incident(s) under investigation and as approved by the Chief of Police or designee.
- F. Employees will be provided with a copy of the signed Administrative Warning.

Note: Criminal investigations take precedence over administrative investigations. Employees who are the subject of a criminal investigation shall be issued the proper Miranda Warning in accordance with all applicable laws and case law.

XI. ADMINISTRATIVE INQUIRY

- A. Administrative Inquiries will be conducted at the direction of the Chief of Police.
- B. At a minimum, an Administrative Inquiry will be documented in the format approved by the Chief of Police or designee.
1. The approved format will include:
 - (a) A description of the alleged violation(s), misconduct, or the specific reason(s) why the inquiry was conducted, to include the means in which the department gained knowledge of the allegation(s).
 - (b) A summary of the inquiry
 - (c) Applicable and appropriate attachments to include, but not limited to:
 - (1) Pictures;
 - (2) Videos;
 - (3) Digital media;
 - (4) Supporting documents; and
 - (5) Complaint Affidavits.
 - (d) Recommendations
 - (1) “Corrective measures as recommended to the Chief of Police”; or
 - (2) “No additional action(s) recommended”, or
 - (3) “Recommend an IA investigation be conducted”.
 - (e) The Administrative Inquiry will be packaged and filed in a manner so that attachments and documents are easily identifiable and secure.
 - (f) The Administrative Inquiry will bear the name and signature of the investigator assigned the investigation.
 - (g) An Administrative Inquiry is complete after it is reviewed and signed by the Chief of Police.
 - (h) Administrative Inquiries that are closed with the recommendation “No additional action(s) recommended” are filed separately from IA investigations. Each Administrative Inquiry is filed under the tracking number only.
 - (i) Administrative Inquiries that are closed with the recommendation “Recommend an IA investigation be conducted” shall be forwarded to the Office of Internal Affairs for inclusion in the respective IA Investigation file.

XII. INTERNAL AFFAIRS (IA) INVESTIGATIONS

- A. All IA Investigations are conducted under the direction of the Chief of Police.
- B. Concurrent Investigations

1. The Chief of Police may allow an IA Investigation or disciplinary action to proceed prior to the final disposition of the criminal investigation.
2. The Office of Internal Affairs shall immediately report any alleged criminal misconduct to the Office of the Chief of Police. The Office of the Chief of Police shall ensure that the discovery of alleged misconduct is properly documented in the IA Investigation file.
3. The evidence of the alleged criminal misconduct may be presented for review to a third party agency, in order to determine if elements of a criminal offense exist.
 - (a) The third party agencies referenced in this section include, but are not limited to:
 - (1) The Texas Department of Public Safety (D.P.S.);
 - (2) The Federal Bureau of Investigations (F.B.I.); and
 - (3) The Collin County District Attorney.
 - (b) To promote concise and timely communication between the MPD and the designated third party agency, a supervisor from the CID shall be designated as the Department's liaison.
 - (c) The report of the cursory review and the recommendations provided by the third party agency will be a permanent part of the IA Investigations file and/or Administrative Inquiry file.
4. Criminal Investigations take precedence over IA Investigations. Employees who are the subject of a criminal investigation shall be issued the proper Miranda Warning in accordance with all applicable laws and case law.
5. To the greatest extent possible, IA Investigations will be coordinated with criminal investigations when applicable.
6. The investigator assigned to the IA Investigation shall shadow the criminal investigation.
7. The IA investigator or supervisor will not contact the prosecutor, unless authorized to do so by the Chief or designee.
8. Information/Evidence
 - (a) The following criteria shall dictate the sharing of information/evidence between the administrative and criminal investigations:
 - (1) All evidence obtained during the criminal investigation may be shared with the administrative investigator, to the extent allowed by law. The CID shall consult with the prosecutor concerning the appropriate time to release this information to the administrative investigator.
 - (2) All evidence obtained during the administrative investigation, except for Garrity related materials, may be shared with the criminal investigator

and/or prosecutor, to the extent allowed by law, after consultation with and review by the City Attorney.

9. Garrity Related Information and Documents

(a) Garrity related information and documents are those obtained as a result of an administrative order requiring that an employee give evidence or provide statements as a condition of continued employment. This information and documentation includes, but is not limited to:

- (1) Statements provided by the accused employee (written and/or verbal);
- (2) The results of a Department ordered special examination; and
- (3) The results of a Department ordered blood, breath, or urine specimen.

(b) Except as provided herein, Garrity related information and documents obtained during the administrative investigation will **not** be provided to a criminal investigator and/or prosecutor unless:

- (1) The employee who is the subject of the IA Investigation authorizes its release; or
- (2) The evidence relates to a false statement, given under oath by the employee, which may constitute perjury or aggravated perjury; or
- (3) In response to a lawful subpoena; and
- (4) The City Attorney reviews all potential Garrity related information and documents for the purpose of approving its release.

C. IA Investigations assigned to First Line Supervisors (2.04) 52.2.1.a

1. Upon being assigned an Administrative Inquiry or IA Investigation by the Office of Internal Affairs, the assigned supervisor will begin an immediate investigation of the allegation(s).
2. The supervisor's investigation should include interviewing the employee any witnesses, and complainants. All relevant evidence should be secured, within the scope of the complaint received.
3. Supervisors will document the investigation in the format approved and provided by the Office of Internal Affairs.
4. Upon completion of the first-line supervisor's investigation, the investigation will be forwarded to the Office of Internal Affairs for review.
 - (a) The forwarded information will include all documents and evidence related to the investigation.
 - (b) After review, the Office of Internal Affairs will forward the investigation packet to the appropriate member of the respective employee's chain of command for review and recommendations.

D. Conducting IA Interviews

1. Prior to any interview or special examination, the employee under investigation will receive an official Letter of Notification. This notification will include a copy of the original Complaint Affidavit or a summary listing the relevant facts.
52.2.5
 - (a) The Letter of Notification will be issued by the Office of Internal Affairs or a designee of the Office of Internal Affairs.
 - (b) The notification will articulate the allegation(s) made against the respective employee to include any specific violations of City policy or Departmental Orders.
 - (c) The original notification document will be a permanent part of the IA investigation file.
 - (d) The notification will bear the signature of the Chief of Police or designee.
 2. All interviews will be conducted while the officer is on duty, unless the seriousness of the allegation(s) is such that an immediate interview is required.
 3. Unless there are extenuating circumstances, all interviews will be conducted at the Police Department.
 4. All interviews will be recorded. Any interruptions will be noted, and any relevant discussions transpiring during breaks will be summarized on the recording and verified for accuracy by the employee.
 - (a) Unless otherwise pre-approved, all interviews will be conducted in the interview room(s) designated for the Office of Internal Affairs.
 - (b) The interviews will be recorded on both audio and video.
 - (c) A secondary audio recorder may be used.
 5. During interviews conducted by the Office of Internal Affairs or a supervisor, there may be two investigators present; however, only one investigator will be designated as the interviewer. Only the interviewer will ask questions of the employee.
- E. Counsel During Administrative Interview(s)
1. The employee will not be permitted to have legal counsel present during an interview concerning administrative violations. The Fifth Amendment right to counsel does not apply to administrative matters. (Garrity v. New Jersey, 385 U.S. 483 and Gardner v. Broderick, 392 U.S. 273)
 2. Employees are permitted to have one personal representative present during an interview associated with an IA investigation.

~~Note: For the purpose of this order, a personal representative is defined as an employee of the MPD.~~
 3. If at any time the Office of Internal Affairs and/or the investigator believes that the employee's representative is involved in the incident under investigation

and/or the representative's actions become more than that of an observer, the representative **shall be** dismissed from the interview.

F. Written Statements

1. Written statements shall be:
 - (a) Submitted on the departments approved form, unless otherwise authorized by the Chief of Police or designee;
 - (b) Submitted in person and to the investigator assigned to the respective investigation;
 - (c) Submitted in a printed format; and
 - (d) Signed by the employee submitting the statement.
2. The written statement form will include instructions for properly completing and submitting written statements.
3. Garrity protected statements, submitted by employees of the MPD, will be provided to the Office of Internal Affairs only.

G. Format for Documentation and IA investigation Files

1. The investigation header will articulate the following information:
 - (a) Assigned IA#;
 - (b) Involved employee(s) information to include but not limited to:
 - (1) Name;
 - (2) Employee ID#;
 - (3) City Department;
 - (4) Division; and
 - (5) Assignment;
 - (c) Complaint source;
 - (1) Internal; and
 - (2) External; and
 - (d) Specify whether or not a formal Complaint Affidavit was submitted.
2. The investigation document will consist of the following sections:
 - (a) Synopsis;
 - (b) Investigation;
 - (c) Evidence;
 - (d) Classification; and
 - (e) Investigators comments.

3. The Investigation File will:
 - (a) Be packaged in a manner that documentation and evidence are secure; and
 - (b) Consist of the following sections:
 - (1) Administrative Investigation;
 - (2) Recommendation for Action of Supervisory Inquiry, if applicable
Recommended Action / Chain of Command;
 - (3) Statements – must be accompanied with a coversheet;
 - (4) Evidence – must be accompanied with a coversheet;
 - (5) Administrative Warning / Garrity Warning / Letter of Notification – must be accompanied with a coversheet; and
 - (6) Commendations / Discipline history – must be accompanied with a coversheet.

H. Timeframe for Completing Investigations 52.2.3

1. Investigations of complaints filed against departmental personnel shall be completed within 90 days from the date the complaint is received. This timeframe includes the determination for and issuance of disciplinary action. (2.05)
 - (a) An investigation is considered complete when the Chief of Police or designee has signed off on the investigative file or disciplinary action has been issued (dependent upon the totality of the circumstances and whether disciplinary action is warranted).
 - (b) The Chief of Police or designee may authorize an extension of the required completion date. Extensions will be granted for a duration of up to 30-days. (2.05)
 - (1) The request for an extension must be made in writing and signed by the investigating officer.
 - (2) The written request must articulate the reasons for which the extension is needed.
 - (3) The written request is considered an official document and it is filed as a part of the investigation packet.
 - (4) Additional extensions can be requested and approved as needed.
 - (5) A copy of the approved request shall be forward to the involved employees and their respective chain of command

I. Status Reports

1. At least bi-monthly (twice a month), the investigator shall provide to the employee(s) under investigation a status report.
2. The status report may be conducted in person, via email, a written memorandum, or by phone.

3. Status reports will be documented in the investigation.
 4. In the event the investigation resulting from a complaint exceeds the established timeframe, the complainant will be provided a status report indicating the department is still conducting the investigation. 52.2.4.b
- J. Investigation Classifications 52.2.8
1. Upon conclusion of an internal investigation, a finding of each of the allegations will be categorized as one of the following:
 - (a) **Exonerated:** Incident occurred but was lawful or proper.
 - (b) **Inconclusive:** Insufficient evidence to either prove or disprove allegations.
 - (c) **Unfounded:** Allegation is false or not factual.
 - (d) **Sustained:** Evidence sufficient to prove allegations.
 2. Findings of investigations will be based upon “substantial evidence”. (2.04)
- K. Duties of an employee during an Internal Affairs Investigation and/or Administrative Inquiry
1. Prior to an internal interview concerning allegations of administrative violations, the employee under investigation will be read their Administrative Warning, directed to sign the original, and provided with a copy.
 2. The employee is required to answer all questions specifically, narrowly, and directly related to the performance of his or her official duties. (Garrity v. New Jersey, 385 U.S. 483 and Gardner v. Broderick, 392 U.S. 273)
 3. Refusal to comply with an order to answer questions is a violation of the MPD’s Code of Conduct – specifically the Section related to Civil, Criminal, Judicial and Administrative Investigative Actions, which may subject the employee to further discipline, up to and including termination. (Garrity v. New Jersey, 385 U.S. 483 and Gardner v. Broderick, 392 U.S. 273)
- Note: Any required self-incriminatory admission made during the administrative interview may be used only in subsequent administrative proceedings, and cannot be used against the employee in subsequent criminal proceedings. (Garrity v. New Jersey, 385 U.S. 483 and Gardner v. Broderick, 392 U.S. 273)**
4. An employee under investigation or their supervisor may, at any time, contact the Office of Internal Affairs to ascertain the status of the investigation of a complaint filed against them.
 5. An employee under investigation will be given an opportunity to respond to the allegations prior to the imposition of any disciplinary action.
 6. Prior to an interview (conducted by the CID) concerning alleged criminal misconduct, the officer under investigation shall be read his/her *Miranda* rights.

The provisions of *Miranda* will be adhered to throughout the criminal investigation interview.

XIII. PERSONNEL ASSIGNMENTS

The Chief of Police is responsible for all personnel assignments and reserves the right to modify such assignments in the best interest of the MPD. The Chief of Police may at any point during an investigation, modify an employee's assignment and/or reassign the employee if the Chief of Police feels it is warranted for the integrity of the MPD or for any other reason(s) the Chief deems appropriate. Modifications to an employees' assignment or reassignment will be categorized as one of the following:

- A. Administrative Leave;
- B. Special Assignment; or
- C. Restricted Duty.

XIV. CONFIDENTIALITY (2.09)

No Employees will discuss or disclose the details of any open IA case except as directed by the Chief or designee and in accordance with the City's Public Information Act policy.

XV. SPECIAL EXAMINATIONS

- A. An employee under investigation may request that he/she be allowed to submit to a special examination.

Note: if approved, the employee will be financially responsible for all monetary responsibilities associated with the special examination.

- B. The Chief of Police may order that an employee submit to a special examination.

Note: The MPD will be financially responsible for the monetary responsibilities of special examinations when an employee is ordered by the Chief of Police to submit to a special examination. The financial responsibilities of the MPD are restricted to only the monetary responsibilities associated with the fitness for duty concerns specified by the Chief of Police.

- C. All special examinations must be pre-approved by the Chief of Police or designee.
- D. Financial Disclosure Statements 52.2.6.d

Employees may be ordered to provide financial statements based on the complaint received. Employees who refuse to provide documents requested of them may be subject to disciplinary action up to and including termination.

- E. Polygraph Examination 52.2.6.e

1. In some cases, a complainant may be requested to undergo a polygraph test to substantiate his/her allegations made against an employee in an affidavit. When the test reveals no deception on the part of the complainant, the accused employee may be ordered to submit to a polygraph test.

2. An officer may be ordered to submit to a polygraph examination as part of an IA Investigation when:
 - (a) The complainant submits to and passes a polygraph examination first; or
 - (b) The Chief of Police orders a polygraph because the subject matter of the complaint is confined to the internal operations of the police department, the complainant is an employee of the department, or the circumstances are considered to be extraordinary and the Chief of Police believes that the integrity of the police department is jeopardized.
 3. Should the accused employee refuse to take the test, after being ordered by the Chief of Police or other competent authority, the accused employee may be subject to disciplinary action up to and including termination for refusal to obey a lawful order, insubordination.
- F. Alcohol and Drug Testing 52.2.6.a
1. The Chief of Police or designee may, based on personal observation, require a Department employee to submit to a test for alcohol or drug use while on duty. The results may be used in the disciplinary process. Refusal to submit to the examination will be considered insubordination and will be grounds for disciplinary actions up to, and including, termination.
 2. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall immediately be relieved from duty. The Chief of Police shall be notified immediately when any employee is dismissed from his/her duty as result of a detectable amount an intoxicant.
- G. Photograph and Lineup Identification Procedures: 52.2.6.b, c
1. Officers may be required to stand in a lineup for viewing by citizens, for the purpose of identifying an employee who is alleged to be the subject of a complaint. Refusal to submit to the examination will be considered insubordination and will be grounds for disciplinary action, up to and including termination.
 2. A photograph identification book or electronic photographs of Department employees may be maintained, for the purpose of identification, by citizens, of an employee accused of misconduct and shall be used when narrowly related to the employee's job.
 3. Photographs or video footage of employees, with or without an employee's consent, may be taken for the purpose of internal investigations as related to the employee's job when the employee is the alleged subject of a complaint.
- H. Fitness for Duty – (Behavioral) Examinations 52.2.6.a
1. A fitness for duty (behavioral examination) may be ordered when an employee exhibits unusual or abnormal behavior.
 2. The Chief of Police may order that an employee submit to a fitness for duty (behavioral) examination whenever he/she believes it is in the best interest of the

employee and/or the Department.

3. An employee's supervisor may recommend to the Chief of Police a fitness for duty (behavioral) examination based upon the nature of the complaint and/or the accused employee's disciplinary record.
4. An employee, who is the subject of a fitness for duty (behavioral) examination, will be referred to the designated Departmental psychologist.
5. Fitness for duty (behavioral) examination(s) will be conducted by a psychologist licensed to practice in the State of Texas. The psychologist may be provided with the following information:
 - (a) Biographical and Departmental history of the employee;
 - (b) Any profile resulting from the applicant-level psychological testing; and
 - (c) A summary of the behavior, which was the basis for the fitness for duty (behavioral) examination.
6. Any information obtained by the Psychologist, which does not relate to the specific incident or problem under investigation, will be considered privileged communication and shall not be entered into any Departmental file or history on the employee.
7. The final diagnostic evaluation will be presented to the Chief of Police, by the Office of Internal Affairs, for consideration in determining what action is to be taken.
8. The official report and/or documentation provided to the Department as a result of a fitness for duty examination (behavioral) is to be considered confidential and the information will be released to only those employees who have a legitimate "need to know," as determined by the Chief.
 - (a) The IA file will be amended to show that a copy of the official report was added.
 - (b) A copy of the report will be forwarded to the Human Resources Department (HR) for inclusion into the employee's medical file.
 - (c) The employee who took the examination shall be provided with a copy of the official report.

XVI. CHAIN OF COMMAND REVIEW

A. First-Line Supervisor's Investigation

1. Upon completion of a first-line supervisor's investigation, the investigation along with any supporting documentation will be forwarded to the Office of Internal Affairs for review.
2. The Office of Internal Affairs will review the first-line supervisor's investigation for accuracy and thoroughness. The Office of Internal Affairs may conduct further investigation if deemed warranted. Once the Office of Internal Affairs has

approved the investigation, the investigation will be returned to the appropriate level of supervisor for review and disciplinary recommendations, if applicable.

First line supervisors will not make recommendations on concurrence or discipline on investigations that they conduct.

3. The IA investigation will be reviewed by each supervisory level of the employee's chain of command. Each supervisor will provide an indication of concurrence or disagreement with the disposition of the investigation and recommendation for discipline, if applicable.
 - (a) The investigation will proceed through the respective employee's chain of command for review and recommendations up to the Assistant Chief.
 - (b) The applicable Assistant Chief will return the investigation file to the Office of Internal Affairs.
 - (c) The Office of Internal Affairs will schedule a meeting with the Chief of Police for the purpose of reviewing the IA Investigation packet. The Office of Internal Affairs will facilitate the final steps of the IA Investigation as directed by the Chief of Police.

B. Investigation Conducted by the Office of Internal Affairs

1. Upon completion of an IA Investigation, the Office of Internal Affairs will submit the IA Investigation packet to the Chief of Police for review. ~~respective employee's first line supervisor for recommendations, concurrence or disagreement with the disposition of the investigation and recommendation for discipline, if applicable.~~
2. The Chief of Police will schedule a disciplinary hearing as outlined below.
3. ~~The investigation will be reviewed by each supervisory level of the respective employee's chain of command. Each supervisor will provide an indication of concurrence, or disagreement with the disposition of the investigation and recommendation for discipline, if applicable.~~
 - (a) ~~The investigation will proceed through the respective employee's chain of command for review and recommendations up to the Assistant Chief.~~
 - (b) ~~The applicable Assistant Chief will return the investigation file to the Office of Internal Affairs.~~
 - (c) ~~The Office of Internal Affairs will schedule a meeting with the Chief of Police for the purpose of reviewing the IA Investigation packet. The Office of Internal Affairs will facilitate the final steps of the IA Investigation as directed by the Chief of Police.~~
4. ~~Upon final approval, the Office of Internal Affairs will notify the employee and the employee's supervisor of the final classification of the investigation.~~
5. ~~If warranted, the Office of Internal Affairs will prepare any disciplinary documents and/or schedule a disciplinary hearing.~~

XVII. DISCIPLINE HEARING

- A. ~~After the conclusion of an Investigation conducted by the Office of Internal Affairs, When suspension, demotion, or termination of an employee is recommended,~~ the Chief of Police will have two disciplinary hearings with the employee. The Hearing Board will consist of the affected employee's Chain of Command. The Chief of Police may add additional members to the Hearing Board as deemed necessary.
- B. ~~Expectations of the An~~ employee who is the subject of a disciplinary hearing may have the following expectations:
1. The employee may have one personal non-participating representative for the hearing;
 2. The employee may present evidence and witnesses on his/her behalf; and
 3. The proceeding will be recorded or transcribed.
- C. The initial hearing is for the purpose of presenting the summary and findings of the allegation(s) against the employee. The employee will be read the summary and findings of the Internal Affairs Investigation recommended by the employee's chain of command. The employee will be presented with a copy of all documentation of the completed investigation used to make the recommendation.
- D. The Chief of Police will schedule a second hearing with the employee within seventy-two (72) hours of the initial hearing to allow the employee to present any evidence or witnesses on his or her behalf. Employees may waive the opportunity to wait up to 72 hours for a second hearing and request that second hearing be conducted as soon as possible.
- E. Following the second hearing the Board will deliberate and make recommendations as to findings and discipline to the Chief of Police.
- F. The Chief of Police will make the final decision as to the imposition of any disciplinary measures after a full review at the hearing.
- G. If suspension, demotion, or termination is decided, the Chief of Police will provide the employee with the following:
1. The reason for the disciplinary action;
 2. The effective date of disciplinary action;
 3. If terminated, the status of fringe and retirement benefits;
 4. A statement detailing the contents of the employee's employment record as it pertains to the disciplinary action; and
 5. The appropriate procedures to appeal the disciplinary action (suspension, demotion, and termination only).
- H. Only the Chief of Police has the authority to terminate employees of the MPD.
- I. Upon completion of an investigation received as a result of a complaint, the complainant will be notified of the conclusion of fact. 52.2.4.c

XVIII. DISCIPLINE/CORRECTIVE MEASURES

All discipline and corrective measures will be consistent with protocol and guidelines established in General Order 105.002 *Corrective Measures*.

XIX. APPEALS

An employee who receives disciplinary action in excess of a Written Reprimand may appeal the disciplinary action in writing and within the specified period and in accordance with City policy. (2.08)

XX. RETENTION/DESTRUCTION OF FILES PROTOCOL

The MPD will adhere to the City's policies regarding the retention and destruction of all MPD records and applicable documents.

