
	<b>TEXAS A&amp;M UNIVERSITY – SAN ANTONIO POLICE DEPARTMENT</b>	
	<b>General Order 100.13 Internal Investigations</b>	
	<b>Effective Date:</b> September 9, 2020	<b>Replaces:</b> January 15, 2020
	<b>Last Review:</b> September 2020	<b>Next Review:</b> May 2022
	 <b>Approved:</b> _____ <small>Chief of Police</small>	
	<b>Reference:</b> TBP: 2.04, 2.05, 2.06, 2.07, 2.09, 2.10	

**I. PURPOSE**

To describe procedures for making complaints against all department personnel, for investigating complaints, and to list and define the dispositions of complaints.

**II. PROCEDURES – GENERAL (TBP: 2.04)**

A. Receipt of complaints

The department encourages any person to bring forward grievances regarding misconduct by employees. Department members shall receive all complaints courteously and shall handle them efficiently. All officers are obligated to explain complaint procedures to anyone who inquires.

B. Responsibilities of supervisors

1. First-line supervisors are primarily responsible for enforcing conformance with departmental standards and orders.
2. First-line supervisors shall know the officers in their charge by closely observing their conduct and appearance.
3. First-line supervisors shall be alert to behavioral changes or problems in their subordinates and, if necessary, document these changes and confer with higher authorities. The first-line supervisor shall assess the behavior, and take or recommend appropriate action.
4. The supervisor shall recommend and, if appropriate, help conduct extra training for officers not performing according to established standards.
5. The first-line supervisor shall employ counseling techniques sanctioned by the department. Counseling is used to adjust and correct minor, infrequent errors or instances of poor performance and to ascertain the nature of any

professional or personal problems that bear on performance. The supervisor shall document all instances of counseling.

C. How to make a complaint

1. A copy of "How to Make a Complaint" will be posted in the public area of the department, provided to media representatives, and may be given to any person requesting information on how to make a complaint.
2. Whenever possible – the complaint should be received on the Department Personnel Complaint Form (see attachment)

D. Responsibility for handling complaints

All complaints alleging a violation of the law or policy will be investigated. Complaints will usually be handled through the chain of command, beginning with the first-line supervisor. Complaints involving how service is provided or a failure to provide service or improper attitudes or behavior may be investigated by an assigned supervisor, the Commander of Professional Standards, or by the Chief of Police. Depending on the nature of the complaint, the Chief of Police may request another Law Enforcement agency to undertake the investigation. **(TBP: 2.06)**

E. Complaint-handling procedures

1. GARRITY WARNING – all members of this department shall be notified of their Garrity rights. The below statement will be inserted in any formal Internal Affairs Complaint Notification Letter:

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

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

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

2. Texas Government Code – all complainants will be informed of the appropriate Texas Government Code regarding complaints against Peace Officers

*Sec. 614.022. COMPLAINT TO BE IN WRITING AND SIGNED BY COMPLAINANT. To be considered by the head of a state agency or by the head of a fire department or local law enforcement agency, the complaint must be:*

*(1) in writing; and*

*(2) signed by the person making the complaint.*

*Sec. 614.023. COPY OF COMPLAINT TO BE GIVEN TO OFFICER OR EMPLOYEE. (a) A copy of a signed complaint against a law enforcement officer of this state or a fire fighter, detention officer, county jailer, or peace officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.*

*(b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.*

*(c) In addition to the requirement of Subsection (b), the officer or employee may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless:*

*(1) the complaint is investigated; and*

*(2) there is evidence to prove the allegation of misconduct.*

3. All complaints, regardless of nature, can be filed in person, by mail, or by phone at any time. As part of the follow-up investigation, persons making complaints by mail or phone normally shall be interviewed and a written, signed complaint prepared. A signed letter of complaint will be accepted as a signed complaint without requiring any specific form. Anonymous complaints shall be followed up to the extent possible. In case of an anonymous complaint, the officer or other person who receives the anonymous complaint shall reduce the complaint to writing in a memorandum with as much information as possible and forward the report to the Chief of Police. There is nothing to preclude the Chief of Police from being the complainant when receiving complaints from the community where the reputation of the University Police Department or the University is in question.
4. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of any person's complaint. An employee of the department, who interferes with, discourages, or delays the making of complaints shall be subject to disciplinary action.

5. Normally, a person with a complaint shall be referred to a supervisor, Commander of Professional Standards, or the Chief of Police who shall assist the individual in recording pertinent information. If initially reported to a supervisor, the first-line supervisor shall conduct a preliminary inquiry. The Chief of Police may, if appropriate, conduct a preliminary administrative investigation. The preliminary investigation consists of questioning the officer, complainants, or witnesses, and securing evidence.

Upon completion of the preliminary administrative investigation, the following documents shall be prepared and forwarded through the chain of command:

- a. a report of the alleged violation;
  - b. any documents and evidence pertinent to the investigation;
  - c. recommendations for further investigation or other disposition.
6. If the first-line supervisor or other investigators determine that the complainant is apparently under the influence of an intoxicant or drug, or appears to have a mental disorder, or displays any other trait or condition bearing on his or her credibility, the supervisor or investigator shall note these conditions. Any visible marks or injuries relative to the allegation shall be noted and photographed.
  7. Prisoners or arrestees also may make complaints. Circumstances may require a department representative meet the complainant at a jail or prison for an interview. If appropriate, the representative will have photographs taken of prisoners' injuries.
  8. An employee who receives a complaint through U.S. mail shall place the correspondence and envelope in a sealed envelope and forward it to the Chief of Police, who shall determine investigative responsibility.
  9. Complaints received by telephone by dispatchers or other employees shall be courteously and promptly referred to a supervisor, Commander of Professional Standards, or the Chief of Police. The dispatcher or employee shall record the name and telephone number of the complainant and state that a supervisor will call back as soon as practical.
  10. The above procedure may also be used when department employees desire to enter a complaint against any other employee governed by this order.
  11. In every case, the Chief of Police will be notified of any complaint as soon as possible by the supervisor receiving the complaint. Complaints received overnight will be brought to the Chief's attention the next workday. Complaints alleging a violation of the law or any serious violation should be reported immediately regardless of the time of day. **(TBP: 2.07)**

F. Disposition of complaints generally

The Chief of Police or his designee shall:

1. Notify the complainant, in writing, as soon as practical, that the department acknowledges receipt of the complaint, whether it will be formally investigated or not, and that the complainant will be advised of the outcome.
2. Enter the complaint into the complaint log, assign a complaint number, and have the complaint investigated. Minor complaints alleging rudeness, minor policy violations and performance issues may be assigned to a supervisor for investigation and resolution. Allegations of a violation of the law or serious policy violations will be investigated by the Chief of Police, an investigator assigned by the Chief of Police, or an outside agency as determined by the Chief.
3. Maintain complaint files separate from personnel files.
4. Take disciplinary action following the investigation, if appropriate.

#### G. Disposition of a serious complaint

1. Allegations of misconduct that might result in discharge, suspension, or demotion, or criminal charges being sought are serious complaints. The term "serious complaint," in this manual, is synonymous with "internal investigation." Internal investigations examine alleged brutality, gross excesses of legal authority, or allegations involving supervisory or multiple personnel.
2. If a criminal offense is alleged, two separate investigations shall be conducted, a criminal investigation as well as an administrative or Internal Investigation. The criminal investigation examines compliance with the criminal law while the Internal Investigation determines compliance with policy and procedure. The Chief of Police will assign these investigations as required.
3. In cases of serious complaints the Chief of Police shall:
  - a. Determine if the officer complained of should remain on-duty, be assigned to non-contact assignments, or put on administrative leave until completion of the investigations.
  - b. Determine and assign responsibility for the investigations.
  - c. Cause the complaint to be registered and assigned an investigation number in the complaint log.
  - d. Maintain close liaison with the district attorney in investigating alleged criminal conduct. Where liability is at issue, the Chief shall similarly maintain contact with the Director of Human Resources, Vice President for Finance and Administration/CFO, President of the University and/or A&M System OGC (Office of General Counsel).

4. All investigations will be completed within 30 days to include the taking of disciplinary action when necessary. If additional time is necessary to conclude the investigation, a request for extension will be presented to the Chief in writing providing justification for the extension. If approved by the Chief, a specific number of days will be approved and a copy will be provided to the involved officer and the original placed in the case file. **(TBP: 2.05)**
5. Upon completion of any investigation, The Chief of Police will notify the complainant in writing, of the results of the investigation and any action taken. **(TBP: 2.10)**

### **III. INVESTIGATIVE PROCEDURES**

- A. Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case.
- B. Assistance of legal counsel
  1. Employees are permitted to have an attorney, supervisor, or other representative with them in the room during any interview regarding allegations of misconduct.
  2. The employee's representative is limited to acting as an observer at the interview, except that where the interview focuses on, or leads to, evidence of criminality, the attorney may advise and confer with the employee during the interview.
- C. All Interviews
  1. Prior to being interviewed, the subject employee shall be advised of the nature of the complaint and provided a copy of the complaint.
  2. All interviews will be conducted while the employee is on duty, unless the seriousness of the investigation is such that an immediate interview is required.
  3. During interviews conducted by the department, there will be one employee designated as the primary interviewer.
  4. The complete interview shall be recorded. The recording will note the time at which breaks are taken in the interview process, who requested the break and the time at which the interview resumed.
  5. The employee shall be provided with the name, rank and command of all persons present during the questioning.
  6. Interview audio or video recordings shall be saved on a media storage device and the recording shall be stored with the case file accessible only to Assistant Chief or Chief of Police.
- D. Interviews for criminal investigative purposes

1. If the Chief of Police believes that criminal prosecutions are possible and wishes to use statements against the employee in a criminal proceeding, or

at least wishes to maintain the option of their use, he or another interviewer shall:

- a. Give the employee the rights as specified in Texas Code of Criminal Procedure Article 38.22.
- b. In addition to the rights set forth in state law, the Chief, or his designee shall advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.
- c. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceeding.

E. Interview for administrative purposes

1. If the Chief of Police wishes to compel an employee to answer questions directly related to his or her official duties, the Chief of Police or another interviewer shall advise the employee that:
  - a. You are advised that this is an internal administrative investigation only.
  - b. You will be asked and are required to answer all questions specifically related to the performance of your duties and your fitness for office.
  - c. All questions specifically related to employment must be fully and truthfully answered.
  - d. If you refuse to answer these questions, you can be subject to discipline that can be as much as discharge or removal from office.
  - e. I want to reassure you that any answers given are to be used solely for internal administrative purposes and may not be used in any subsequent criminal prosecution should such occur.
  - f. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
2. In an interview for administrative purpose, no Miranda rights are required.

#### **IV. INVESTIGATIVE TOOLS AND RESOURCES**

- A. In addition to interviews of the employee and witnesses, the Chief of Police may require other activities in support of a complaint investigation or internal investigation, including:
  1. Medical and laboratory examination



2. The Chief of Police or officer in authority may - based on reasonable suspicion or his 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 grounds for disciplinary action and may result in the employee's dismissal.
  - a. If the employee is believed to be under the influence of alcohol, a licensed breathalyzer operator shall administer the test. The Chief of Police or officer in authority shall witness the test and sign the report.
3. If the employee has a reading of .02 or higher or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the Chief of Police or officer in authority.
4. If the employee is believed to be under the influence of self-administered drugs, he may be compelled to submit to a blood or urine test. The test shall be administered under medical supervision where hygienic safeguards are met. The sample shall be handled using the same safeguards as evidence in a criminal process.
5. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty as soon as possible by the Chief of Police or other officers in authority.
6. If an employee refuses to submit to a test, (alcohol or drugs) then the Chief of Police or other officer in authority shall immediately relieve the employee from duty (on paid leave) for failure to cooperate in an administrative investigation.
7. Property assigned to the employee but belonging to the department is subject to inspection where the department has a reasonable suspicion that evidence of work-related misconduct may be found therein. Department property includes files, storage lockers, desks, computers, and vehicles.

**B. Photograph and lineup identification procedures**

1. Officers may be required to stand in a lineup for viewing for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and may result in dismissal if the criminal prosecution is not anticipated.
2. A book of photos of department employees may be maintained for the purpose of identification of an employee accused of misconduct.

**C. Financial disclosure statements**

An employee may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain.

#### D. Polygraph

1. All personnel shall be required to submit to a polygraph if ordered to do so by the Chief of Police.
2. The Police Chief may order employees to take a polygraph when:
  - a. The complainant has taken and passed a polygraph concerning the incident. (Unless the complainant is willing to submit to testing but the polygraph operator determines the complainant is not a fit subject due to mental condition, age, or medication).
  - b. Regardless if the complainant takes a polygraph or is even known, but the complaint is of such a nature to bring severe discredit and suspicion on the department and cannot be satisfactorily resolved in any other manner.
3. The results of the polygraph examination shall not be used as the sole basis for disciplinary action against any employee.
4. Any polygraph examination given under the provisions of this order shall be administered by a private contractor licensed to administer polygraph examinations in the State of Texas or must be a licensed examiner from another law-enforcement agency. No employee shall administer an examination to another employee.
5. Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination, or deliberately impede the administration of the polygraph shall be grounds for disciplinary action and may result in dismissal from the department.

#### V. WITHDRAWAL OF COMPLAINTS

- A. If a complainant expresses the desire to withdraw a complaint and has no desire for the complaint to be pursued further, the complainant, in the presence of a supervisor, shall be requested to sign a Complaint Waiver Form (see attached).
- B. All Complaint Wavier Request Forms shall be forwarded to the Chief of Police as soon as practicable.
- C. The fact that a complainant has withdrawn a complaint does not necessarily terminate the investigation. The decision to terminate the investigation rests with the Chief of Police.

#### VI. ADJUDICATION OF COMPLAINTS (TBP: 2.04)

- A. The Chief of Police will classify completed internal affairs investigations or complaint determinations, based on facts during the investigation as:

1. Sustained: The allegation is supported by sufficient evidence.
  2. Unfounded: The allegation is false, not factual;
  3. Exonerated: The incident occurred, but was lawful, reasonable and justified;
  4. Not Sustained: There is insufficient evidence to prove or disprove the allegation(s).
  5. Administratively Closed: In some cases, the complaint or investigation is closed prior to reaching a disposition. Examples include situations when a complainant voluntarily requests that a complaint be withdrawn, or the subject Officer terminates his/her employment prior the disposition of the complaint.
- B. Completed investigations will be maintained in internal affairs files in the Professional Standards Office with a copy of the initial complaint notification and complaint determination letter placed on file in Guardian Tracking. Sustained complaints shall be filed in the individual employee's department personnel file with a copy in the internal affairs files.
- C. Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim, and the officer's prior disciplinary history. It shall be commensurate with the circumstances surrounding the incident and in consideration of the employee's service record and prior sustained complaints.
- D. Disciplinary records (TBP: 2.09)**
1. The department shall maintain a log of all complaints. Complaints will be labeled by the year and the order in which they are received (e.g.; I-2014- 01).
  2. The complaints and complete internal investigative files shall be kept in a locked file cabinet in the Professional Standards Office. Only two keys will be kept: 1) Commander of Professional Standards and 2) the Chief of Police. These files shall be maintained in accordance with state law and university policy.
  3. The Chief shall direct a yearly audit of complaints (due in January for the previous calendar year) to ascertain a need for training or a revision of policy. The Chief may direct an immediate audit if an employee is flagged for Intervention by Guardian Tracking.
  4. The Chief shall publish an annual or other periodic summary of complaints that shall be made available to the public.

**Texas A&M University – San Antonio Police Department**

**Personnel Complaint**

Date: \_\_\_\_\_

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

(Use reverse side of the form if more space is needed.)

(Nature of Complaint - cont'd)

Complainant Signature Witnessed By:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Complainant

\_\_\_\_\_  
Date:

Copy Received:

\_\_\_\_\_ Complainant refused to affix signature

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_ Other (explain)

Response Waived:

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

**GOVERNMENT CODE**

**Section 614.022 Complaint to be in writing and Signed by Complainant.**

To be considered by the head of a state agency or by the head of a fire or police department, the complaint must be: (1) in writing and (2) signed by the person making the complaint.

**Section 614.023 Copy of Complaint to be Given to Officer or Employee.**

- a) A copy of a signed complaint against a law enforcement officer, fire fighter or police officer shall be give to the officer or employee within a reasonable time after the complaint is filed.
- b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.

\_\_\_\_\_

TEXAS A&M UNIVERSITY SYSTEM

COMPLAINT WAIVER REQUEST

DATE: \_\_\_\_\_

To: Chief \_\_\_\_\_

I, \_\_\_\_\_ resident of \_\_\_\_\_, Texas,

\_\_\_\_\_ County, respectfully request the allegations of misconduct

directed by me towards Officer \_\_\_\_\_ be withdrawn. I do not

desire to further pursue the matter.

\_\_\_\_\_  
Signature of Complainant

Reasons (if any) for this complaint waiver:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_