

**POLICY
1020**

**EFFECTIVE
DATE
11-30-20**

**Eugene
Police Department**



Personnel Complaint Process

1020.1 PURPOSE AND SCOPE

This document provides policies, procedures, and general information regarding the reporting, investigation, and disposition of complaints regarding the conduct of members and employees of the Eugene Police Department.

This policy combines portions of Eugene Municipal Code, bargained Police Auditor Protocols, labor contracts and clarifying memos and agreements relevant to the processing of personnel complaints. When there is discrepancy between this policy and the relevant labor agreements (for represented employees), the agreement prevails.

This policy is intentionally a mix of policy, procedure, and general information in order to provide a single document that outlines the complex system of personnel complaints in order to provide a complete picture of the process for employees and the community.

1020.1.1 Definitions

Allegation of misconduct: A report alleging that an employee has violated a department policy, procedure, or rule; violated a person's civil rights; or committed a criminal offense.

Auditor: The Police Auditor employed by the City of Eugene City Council under the authority of *the Eugene City Charter*, as specified in Ordinance 20374.

Blue Team: Software plug-in for IAPro that facilitates data entry for supervisors.

Civilian Review Board (CRB): A board whose goal shall be to increase the transparency of, and public confidence in, the police complaint process. In general, the civilian review board evaluates the work of the independent police auditor, and may review completed complaint investigations involving sworn police employees to provide comment, from a civilian perspective, about whether the complaint was handled fairly and with due diligence.

Community impact case: A complaint involving sworn police officer(s) that alleges excessive force, bias, disparate treatment or violation of constitutional rights, which the police auditor determines should be reviewed by the civilian review board in accordance with section 2.244(3) and 2.244(4) of this code.

Facilitated conversation: A discussion guided by a third party, trained facilitator, between the complainant and a department representative, most often the named employee's supervisor or internal affairs staff.

Incident Review: A preliminary fact-finding investigation generally assigned to Internal Affairs, but may be assigned to a Lieutenant or equivalent rank or higher in the employee's chain of command. This review may not include an interview with the involved employee. Based upon this review, the Auditor or Chief will determine the need for further investigation. As deemed appropriate, an Incident Review may be reclassified to an Internal Affairs investigation.

IA: Internal Affairs

IA Report: The report form, generated by the IA database management program, currently IAPro, which is used to document complaints, inquiries, and commendations.

Inquiry: A question regarding a department policy, procedure or regulation, or regarding employee conduct that, even if true, would not qualify as a personnel complaint, even though it may indicate citizen dissatisfaction. Inquiries will be documented as outlined in §1020.2.8, but will not be considered to be complaints (refer also §1020.2.4.)

Mediation: A process in which a professional mediator facilitates communications and negotiations between parties to assist them in reaching a voluntary agreement regarding a dispute or disagreement.

OPS: Office of Professional Standards, Office of the Chief.

Policy complaint: A complaint about a Eugene Police Department (EPD) policy or established procedure.

Respectful Work Environment complaint: A complaint of alleged workplace discrimination, harassment, sexual harassment, disrespectful or offensive behavior, or any other violation of the City's Respectful Work Environment policy and/or Policy 1028 – Workplace Harassment Prevention.

Service complaint: A complaint about police employee performance or demeanor, customer service, and/or level of police service.

1020.2 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1020.2.1 Availability of complaint forms

Complaint/commendation forms provided by the Auditor will be maintained and be readily available in the public lobby of the department and each substation. Forms may also be available at other locations.

Completion of this form is not necessary. Complaints may also be filed with the Police Auditor's office in many ways, including but not limited to mail, e-mail, telephone or in person.

1020.2.2 Source of complaints

- a. The intake and classification of all complaints by members of the public against EPD employees will be the responsibility of the Police Auditor's Office.
- b. City of Eugene employees may lodge a complaint either with the Auditor's Office or with the Internal Affairs Unit if the complaint arises out of the complainant's employment with the City.
- c. Complaints may be accepted from third-parties with a reasonably direct knowledge of the incident.
- d. Anonymous complaints alleging misconduct will be accepted if there is enough specific information to allow an investigation of the complaint. The Auditor will honor this request as allowable by law and as practicable to investigate the incident.
- e. The Police Auditor may initiate a complaint based upon credible evidence of possible misconduct.

1020.2.3 Acceptance and documentation of complaints

- a. Contact a supervisor if a community member wishes to file a complaint, or if their concerns as stated are an allegation against an EPD employee. Assistance by a supervisor will occur, regardless of who the officer is.
 1. The officer will refer the community member to the supervisor and the supervisor will handle the complaint intake.
 2. The supervisor will gather sufficient information to document the complaint in Blue Team before the end of shift. The supervisor will document their actions taken to resolve the complaint so the Auditor can classify the case and determine next steps.

If employees learn of a complaint or allegation involving a fellow employee, or if an employee learns of, or observes, a fellow employee behaving in a way that would constitute misconduct or a significant violation of policy, they must contact a supervisor and/or IA and/or the Auditor's Office as soon as practicable. If an employee is behaving in a manner that a reasonable officer would consider to be a policy violation, the observing officer must make every reasonable effort to immediately stop the action(s) of the officer.

- b. If the complaining party is a juvenile, consideration and preference should be given to contacting one of the juvenile's parents and apprising them of the circumstances of the complaint.
- c. If EPD receives a citizen complaint, all available information will be noted and referred to the Auditor within 24-hours. A BlueTeam entry satisfies the notification requirement (when completed within 24 hours).
- d. All complaints, inquiries, incident reviews and commendations will be documented in a log or database by Internal Affairs and the Auditor. This database may be shared only by and among the Chief of Police, Deputy Chief, Internal Affairs, and the Auditor. The Auditor may allow access to his or her staff as necessary.

Information in the database may be made available to the City's attorneys, or as required by law. A named employee may review those portions of the IA files relevant to the allegation(s)/complaint(s) made against that employee.

- e. The person receiving the complaint shall make every reasonable attempt to audio and/or video record the complaint.
- f. EPD and the Auditor's Office will make every attempt to discover and dismiss complaints filed in bad faith or under false pretenses.

1020.2.4 Complaint classification

a. The Auditor's Office, with assistance from Internal Affairs, generally conducts a preliminary investigation prior to classification of complaints. The preliminary investigation will include as much information as can be reasonable gathered, for example:

- basic information about the event (e.g., date, time, location, description of the event);
- the name and badge number for each involved employee;
- description of involved vehicles;
- audio or video of the event, the name and address of any potential witness; and
- other evidence relevant to the investigation.

b. Records/warrant checks will not be conducted as a routine part of complaint intake. If, during the preliminary investigation, an outstanding warrant for the arrest of the complainant is discovered by the Auditor, he or she will follow established protocols and encourage the complainant to resolve the warrant with the court. However, if the warrant is of a serious nature (e.g. crime of violence, crime involving a serious risk of danger to the public, etc.) the Auditor may notify a sworn IA member who will determine if there is reason not to notify the complainant to resolve the warrant.

c. After a preliminary investigation, the Auditor will classify the complaint based on what is contained in the complaint and if available, review of relevant information. Complaints will be classified in the following categories:

- Allegation of criminal conduct (on or off duty)
- Allegation of misconduct
- Incident Review
- Supervisor Action
 - Service complaint
 - Policy complaint
 - Inquiry
- Respectful Work Environment

d. The Auditor may dismiss or decline to accept the complaint for any of the reasons outlined in §1020.2.9.

e. The Auditor documents the reason for any dismissals and explain the decision to the complainant in writing, if possible, within five business days of the initial intake. A copy of this correspondence will be forwarded to Internal Affairs, the affected

employee(s), and to the appropriate bargaining unit if any of the involved employees is a represented employee.

- f. Service complaints, incident reviews, allegations of misconduct, and allegations of criminal conduct will be further classified by type (i.e., performance, constitutional rights, etc.). These, along with Respectful Work Environment complaints, policy complaints and inquiries, will be recorded in the IA database for statistical tracking and trend analysis purposes.
- g. The Police Auditor's Office notifies the complainant, Internal Affairs, and the Eugene Police Employee's Association (EPEA) President (if the named employee is represented by EPEA) of receipt of the complaint and the classification decision within seven business days after the complaint was received.
 - 1. IA personnel will notify the named employee, that employee's chain of command, and the EPEA Board (if the named employee is represented by EPEA) within five business days after receiving the notification from the Auditor of an allegation of misconduct.
 - 2. IA personnel will notify the employee's chain of command and the EPEA Board (if the named employee is represented by EPEA) within three business days after receiving notification from the Auditor of a service complaint.
- h. The Auditor determines if a complaint is appropriate for mediation and if so forwards such a recommendation to the Chief of Police as outlined in §1020.7.2.
- i. The Auditor, along with the CRB, will determine whether a complaint will be classified as a community impact case and reviewed prior to closure, as set out in City Code.

1020.2.5 Handling of complaints

- a. Allegations of criminal behavior are forwarded to the Chief of Police via IA staff unless, in the Auditor's view, informing the Chief of Police will compromise a criminal investigation. In those circumstances, the Auditor may forward the allegation(s) directly to the appropriate government prosecutor.
- b. Allegations of misconduct are forwarded to the Chief of Police via IA staff for formal investigation by Internal Affairs, or by other department staff if directed by the Chief of Police. Any investigation conducted by other department staff will be reviewed by the Professional Standards Manager prior to any adjudication.
- c. Service complaints not resolved at intake by the Police Auditor's Office will be directed to Internal Affairs and handled as outlined in §1020.2.7.
- d. The police auditor may require, and is authorized to contract for, an external investigation when the police auditor determines that an external investigation is appropriate.

- e. Respectful Work Environment complaints may be assigned to the Employee Resource Center (ERC), IA, or both together. If IA is assigned, the ERC will assist as the subject matter experts on RWE complaints.

1020.2.6 Community impact cases

- a. If a case is referred to the Civilian Review Board (CRB), and accepted for review, the CRB will notify the complainant(s), the Chief of Police, and the Eugene Police Employee EPEA President (if the matter involves an EPEA represented employee) of its decision to review the case. The Chief of Police or designee will then notify the named employee(s) and the EPEA President (if the matter involves an EPEA-represented employee) within seven business days after receiving notification of the CRB's decision.
- b. Within 14-days of receiving the case, the CRB meet to discuss and present its determination regarding the case.
- c. Within 30-days of receiving the case, the CRB does one or more of the following:
 - Concurs with the case adjudication; and/or
 - Develop recommendations regarding the case, or identify other relevant issues for further consideration; and/or
 - Require the City to reopen the investigation if it finds either:
 - That the investigation was incomplete or inadequate, and additional investigation is likely to reveal facts that could affect the case adjudication; or
 - That the adjudication reached by the City is not supported by substantial evidence.
- d. Unless the CRB has voted to reopen the investigation, the Auditor develops a written synopsis of the board's proceedings and conclusions regarding the investigation and will provide that information to the Chief of Police so that appropriate steps to close the case can be taken.
- e. If the CRB reviews the case, it will notify the complainant(s), the Chief of Police, and the EPEA President (if the named employee is represented by the EPEA) of its conclusions on the case. The Chief of Police or designee will then notify the affected employee(s) and the EPEA President (in the case of EPEA-represented employees) within seven business days after receiving the CRB's conclusions.

1020.2.7 Handling of service complaints

- a. If IA staff or another department supervisor becomes aware of circumstances that might cause the complaint to be reclassified as a misconduct case, or otherwise make it possibly unsuitable for processing as a service complaint, the case will be referred to the Chief of Police via chain of command and to the Auditor's office by IA. If a reclassification is made, handling as a service complaint is terminated and the case is reassigned for disposition.
- b. Cases classified as service complaints will be assigned and routed to the supervisor of the involved employee(s.)

- c. Within 30-days of receiving the service complaint, the assigned supervisor will discuss the matter with the involved employee and as appropriate the reporting party. At a minimum, a courtesy contact will be made with the reporting party unless he or she has indicated at intake that contact is not desired. Based on the information obtained, the assigned supervisor may contact any additional witnesses or obtain further information at their discretion. Any request for a time extension will be e-mailed to the affected division manager, with a copy to the IA Program Coordinator.
- d. Within 30-days of receipt, the assigned supervisor will complete a brief closing memorandum using the approved electronic format summarizing the investigation. The supervisor will forward this closing memorandum to his or her supervisor, with a copy to the IA Program Coordinator. No disposition (e.g., sustained, within policy) should be provided as no formal discipline can result from this process. The supervisor should identify any employee performance issues or needed training. Any coaching should be documented in the supervisor's electronic working file and may be referred to during an employee's performance review if appropriate.
- e. The memorandum will be reviewed by the assigned supervisor's own immediate supervisor for quality control and supervisory performance information. The reviewing supervisor will indicate his or her concurrence and then forward the closing memorandum to the IA Program Coordinator.

1020.2.8 Handling of inquiries

Questions from the public about police activities are different from a complaint to the Auditor's office or to a supervisor that are later classified as an inquiry.

- a. If a community member has a question, the matter shall be referred to an on-duty supervisor for resolution.
- b. An inquiry will be documented in Blue Team as outlined in §1020.2.3 and information forwarded to the Auditor, in cases when:
 - 1. The inquiry expresses some dissatisfaction with EPD performance in a situation, or with EPD policy or practice, and the community member is not satisfied with the answer he or she receives; or
 - 2. A question about a high-profile issue arises out of a specific incident.

1020.2.9 Dismissal of or declining investigation of complaints

- a. Except for good cause, complaints of minor misconduct involving courtesy, communication, minor rule violations, and service level that might be handled as a service complaint shall be dismissed by the Auditor if not filed within 60-days of the incident.
- b. Except for good cause, complaints of serious misconduct (e.g., excessive force that causes substantial physical injury, egregious act of disparate treatment, major rule violation) shall be dismissed by the Auditor if not filed within six months of the incident.

Complaints will be dismissed if:

- a. The complaint is about a person who does not work for the Eugene Police Department. The complaint will be referred to the appropriate agency if that agency can be identified.
- b. The complainant could reasonably be expected to use, or is using, an alternate remedy or channel for resolution of the complaint (e.g., a judicial determination of guilt.)
- c. It is subject to a judicial, administrative, or other review that will explicitly or implicitly require a finding or ruling on the conduct that is the subject of the complaint.
- d. Absent new, substantial evidence or information, the complaint was previously adjudicated. (This circumstance may arise if a second person files a complaint about an incident that was previously resolved, or if the same person attempts to file a second complaint about a matter that was previously adjudicated.)
- e. The involved employee cannot be identified.
- f. The involved employee has resigned or has been terminated.
- g. Upon review of the facts presented or information learned during intake, the allegations are found to be illogical, malicious, or improbable.

1020.3 SUPERVISOR RESPONSIBILITY

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

- a. A supervisor receiving a complaint involving allegations of a serious nature will ensure that the Deputy Chief, Watch Commander, involved employee's Division Manager, IA, and Chief of Police are notified as soon as practicable.
- b. A supervisor receiving or initiating a complaint will follow the procedures outlined in §1020.2.3. The reporting person will be provided with contact information for the Auditor's Office.
 1. The supervisor should make every reasonable effort to obtain names, addresses, and telephone numbers of additional witnesses.
 2. Once any needed immediate medical attention has been provided, photographs of alleged injuries as well as accessible areas of non-injury shall be taken.
 3. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor will orally report the matter to the employee's Division Manager, IA, Deputy Chief, or the Chief of Police who will initiate appropriate action.
- c. The supervisor of an employee who is the subject of an allegation of misconduct will ensure that the procedural rights of the employee are followed.

- d. When the nature of a personnel complaint relates to sexual, racial, ethnic, or another form of prohibited harassment or discrimination, the supervisor receiving the complaint will follow established procedures outlined in *Policy 1028 - Workplace Harassment Prevention* as well as applicable provisions of this policy.

1020.4 ASSIGNMENT TO ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature or when circumstances dictate that it would impose an unreasonable risk to the department, the employee, other employees or the public, an accused employee may be assigned to administrative leave pending completion of the investigation or the filing of criminal and/or administrative charges.

- a. A Watch Commander, a Division Manager, Deputy Chief or designee, may place an employee on paid administrative leave for the balance of his or her shift. Administrative leave for a longer period must be approved by the Chief of Police or designee.
- b. When an employee is placed on administrative leave under this policy, IA will be apprised of the date and time the employee was placed on administrative leave and the date and time the administrative leave ended.

1020.4.1 Administrative leave

An employee placed on administrative leave may be subject to the following guidelines:

- a. Under such circumstances, an employee placed on administrative leave will continue to receive regular pay and benefits pending the imposition of any discipline.
- b. An employee placed on administrative leave may be required by a supervisor to relinquish any badge, departmental identification, assigned weapon(s), and any other departmental equipment. All items will be stored in the employee's assigned locker, and the employee will relinquish their locker key to a supervisor.
- c. An employee placed on administrative leave may be ordered to refrain from taking any action as a departmental employee or in an official capacity. The employee will be required to continue to comply with all policies and lawful orders of a supervisor.
- d. An employee placed on administrative leave may be temporarily reassigned to a different shift (generally normal business hours) during the pendency of the investigation and the employee may be required to remain available for contact at all times during such shift and report as ordered.
- e. It is the responsibility of the supervisor placing an employee on administrative leave to promptly notify the employee's Division Manager, Deputy Chief and the Chief of Police. Unless otherwise specified, the employee will remain on administrative leave status until released by the Chief of Police.
- f. At such time as any employee placed on administrative leave is returned to full and regular duty, the employee will generally be returned to his or her regularly assigned shift, and will have all his or her equipment returned and authorities reinstated.
- g. Exceptions to administrative leave procedures may be made by the Chief of Police.

1020.5 ALLEGATIONS OF CRIMINAL CONDUCT

- a. Where an employee of this department is accused of potential criminal conduct, the Chief or designee decides who has investigative responsibilities. The Police Chief and the Auditor determine whether the administrative investigation shall occur after the criminal investigation or concurrently.
- b. The Chief of Police will be notified as soon as practical when an employee is accused of criminal conduct. In the event of serious criminal allegations or where otherwise warranted, the Chief of Police may request a criminal investigation by an outside law enforcement agency.
- c. The Chief and the Auditor will determine whether an administrative investigation will be suspended to not jeopardize a pending criminal investigation or prosecution. Should they disagree, they shall present in writing their respective positions to the municipal court judge, who shall then decide whether all or part of an administrative investigation will be postponed per municipal code 2.456(2)(c).
- d. An employee accused of criminal conduct will be provided with all rights and privileges afforded to a civilian and the employee may not be administratively ordered to provide any information to a criminal investigator.

1020.6 ADMINISTRATIVE INVESTIGATION OF COMPLAINT

- a. Allegations of misconduct will be investigated by Internal Affairs unless otherwise directed by the Chief of Police. The Auditor may choose to be present at interviews conducted during the investigation. The Auditor will not directly ask questions of the person being interviewed, but may suggest topics, lines of questioning, and/or specific questions to the person conducting the interview.
- b. An investigator or supervisor assigned to investigate a personnel complaint will proceed with due diligence. Every reasonable effort should be made to complete each investigation within the time frames outlined in policy.
- c. If the reporting party is charged with a criminal offense associated with the incident being investigated, the administrative investigation will not be suspended unless there is a real necessity to do so in order not to jeopardize a pending criminal investigation or prosecution. If such a necessity exists, the administrative investigator will undertake as much of the administrative investigation as possible without jeopardizing the criminal matter. Authorization to suspend an administrative investigation because of a concurrent criminal investigation must come from the Chief of Police or designee.
- d. The assigned administrative investigator, prior to interviewing an involved employee, will provide the employee with sufficient information about the allegation(s) to reasonably apprise him or her of the allegation(s).
- e. During the investigation, the following procedures will be followed with regard to the named employee(s):

1. Once notified of an investigation, a named or witness employee may not become involved in the investigation except as directed by the assigned investigator or other appropriate authority.
 2. The employee will normally be provided with at least 72-hours notice prior to any interview. If the Chief of Police determines that the nature of the investigation requires that an employee be interviewed with less than 72-hours notice, the department will provide the employee with at least 24-hours notice of the interview and, if the employee is represented, provide the appropriate bargaining unit with the rationale for the decision.
 3. Interviews of named employees will be conducted during reasonable hours and, if the employee is off duty, the employee will be compensated. If practical, the interview will be conducted during the employee's normal working hours and at the facility where the employee is normally assigned.
 4. No more than two interviewers may ask questions of a named employee.
 5. All interviews will be for a reasonable period and the employee's personal needs will be accommodated.
 6. No employee will be subjected to offensive or threatening language, nor will any promises, rewards, or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively or be subject to discipline for insubordination. Nothing administratively-ordered may be provided to a criminal investigator for use in a criminal investigation or proceeding.
 7. The interviewer should record all interviews of employees and witnesses. The employee or his or her representative may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview will be provided to the employee prior to any subsequent interview.
 8. All employees subjected to interviews that could result in disciplinary action will have the right to have an uninvolved representative present during the interview; however, the interview will not be unnecessarily delayed waiting for the representative's arrival. The representative may counsel the employee, but may not be disruptive or unreasonably interfere with the interview. At the conclusion of the interview, the representative will be given reasonable opportunity to ask clarifying questions pertinent to the investigation; however, the representative may not present evidence during the interview.
 9. All employees must provide complete and truthful responses to questions posed during interviews.
 10. No employee will be compelled to submit to a polygraph examination, nor will any refusal to submit to such examination be mentioned in any investigation.
- g. The investigation shall be completed and forwarded to the reviewing supervisor and the Auditor within 60-days from the date of intake, or by the deadline set by the Chief of Police, whichever comes sooner.

1. If there are reasons that preclude the investigation from being completed within this time period, an extension from the Chief of Police or designee will be requested in writing. If the extension is granted, the investigator will notify the named employee, his or her chain of command, and the named employee's bargaining unit (if applicable), that notification will include the reason for the extension.
 2. The Professional Standards Manager will review the completed investigation for accuracy, completeness, and conformance to policy, and will ensure that additional work needed (if any) is completed. The completed investigation should be forwarded to him/her for review in enough time to allow this to happen before the 60-day period expires.
 3. The files will then be provided to the Auditor for review and a determination that the investigation was thorough, complete, and unbiased. The Auditor will make this determination within 10-business days of receipt of the completed investigation.
- h. The investigation and related documents are to be treated as confidential, and may be discussed only with appropriate supervisory, ERC and management personnel.
 - i. If, during the investigation, evidence of misconduct or another policy violation is discovered that is not documented in the original report, the investigator will discuss that issue with the Professional Standards Manager. The Professional Standards Manager or designee shall consult with the Auditor to determine the appropriate course of action. If a decision is made to include the new allegation in the current investigation, the investigator shall notify the employee of the new allegation and include it in the investigation and resulting report. The employee shall be given the opportunity to be re-interviewed and/or provide any desired input regarding the new allegation.
 - j. The Auditor may require the City to undertake additional investigation if the investigation is deemed incomplete.
 - k. If the Auditor becomes aware of a criminal allegation not previously known, the Auditor will follow the procedures outlined in §1020.2.5.a.

1020.6.1 ADMINISTRATIVE SEARCHES

- a. An employee of this department may be administratively ordered to submit to a blood, breath, or urine test for alcohol and/or drugs when reasonable suspicion exists that the employee has violated department policy by using or being under the influence of drugs or alcohol. The test will be for the drug(s) (including alcohol) for which reasonable suspicion exists. The use of compelled testing results will be restricted to the administrative investigation.
- b. Any employee may be compelled to disclose personal financial information pursuant to proper legal process if such information tends to indicate a conflict of interest with official duties or is related to a serious allegation of misconduct and then only if that information would be material to the investigation.

- c. Employees shall have no expectation of privacy in, or when using, offices, desks, lockers, vehicles, telephones, computers, radios, or other communication devices provided by the Eugene Police Department.

Assigned lockers, offices, desks, vehicles and storage spaces are the property of the City and may be administratively searched by a supervisor for work-related purposes (e.g., obtaining a needed report or radio.)

- d. Other areas that are not assigned to specific persons (e.g., shared desks, common office space, shared vehicles) may be administratively searched by a supervisor for non-investigative purposes.
- e. Personal locks that have been applied to lockers, desks, filing cabinets, etc., do not establish an expectation of privacy for purposes of this policy. The employee will be given reasonable opportunity to remove the lock before a search, however, the lock may be bypassed if the employee cannot or will not remove it.
- f. An investigative search of such areas will only be conducted with the approval of the Chief of Police or a designee upon a reasonable suspicion that misconduct is involved.

1020.6.2 ADMINISTRATIVE INVESTIGATION FORMAT

Investigations of personnel complaints will be detailed, complete, and essentially follow the approved investigative report format, which will include:

Introduction: Include the identity of the employee(s), the identity of the assigned investigator(s), the initial date and source of the complaint.

Synopsis: Provide a very brief summary of the facts giving rise to the investigation and a summary of the investigative steps taken.

Summary of allegations: List the allegations separately (including applicable policy sections) with a very brief summary of the evidence relevant to each allegation.

Evidence as to each allegation: Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of employee and witness statements. Other evidence related to each allegation should also be detailed in this section.

Attachments: A list of attachments (e.g., recordings, photos, documents) should be included with the report.

1020.7 ADJUDICATION OF PERSONNEL COMPLAINTS

- a. After the Auditor has reviewed the investigation and deemed it complete, the supervisor assigned to review the allegation, normally the involved employee's immediate supervisor, shall develop a case adjudication recommendation after conferring with his or her supervisor and the Auditor. The consultation must include a review of the investigation to ensure that appropriate investigative issues have been thoroughly addressed.

1. All complaints will be adjudicated within 14-days. Therefore, the supervisor's recommendation must be submitted to the chain of command well within 14-days to the Chief of Police to allow time for a final adjudication decision. If this deadline cannot be met, a request for a time extension, along with the reason(s) why the deadline cannot be met, will be e-mailed to the Chief of Police, with copies to the requesting supervisor's chain of command and the Professional Standards Manager. Once the extension is granted the named employee(s) and the named employee's bargaining unit (if applicable) will be advised. Any such request for extension should be made as soon as the need for the extension has been identified.

If the adjudication recommendation is being written for multiple officers and one or more are non-represented, a separate adjudication recommendation will be made for each group, represented and non-represented.

2. For cases identified as community impact cases, the initial adjudication decision by the Chief is preliminary. After the Civilian Review Board has completed its deliberations and recommendations, the Chief will consider those recommendations in making his final adjudication. (See also §1020.2.6.)
3. The Auditor may develop independent adjudication recommendations, but is not permitted to recommend the level of discipline for police employees. If the Auditor disagrees with the supervisor's recommendation, his or her recommended adjudication and any supporting comments are documented and forwarded to the Chief of Police.

- b. Each allegation will receive one of the following adjudications (the standard of proof is "preponderance of the evidence"):

Sustained: The complainant's allegation was determined to be a violation of EPD policies, rules, and/or procedures, and the involved employee(s) committed the violation as alleged.

Insufficient Evidence (Not Sustained): There was insufficient evidence to determine whether or not a violation of EPD policies, rules, and/or procedures occurred.

Unfounded: The complaint is unsubstantiated. It was determined that the employee did not engage in the behavior alleged by the complainant.

Within policy: It was determined that the behavior of the employee(s) involved did occur, but the behavior was consistent with EPD policies, rules, and procedures.

Mediated: During the process of an investigation it was determined that the case would likely be more successfully resolved through mediation. All parties agreed to mediate the complaint, and the mediation process was completed.

Administratively closed: The investigation is closed prior to reaching a conclusion (e.g., complainant does not provide information needed, or refuses to cooperate with the investigation.) The investigation may be reactivated upon discovery of new, substantive information or evidence.

- c. The adjudicating supervisor will notify the employee of the formal adjudication within five-days of the Police Chief's decision verbally or in writing. If a written adjudication memo

cannot be delivered within five days, an e-mail will be sent to the Professional Standards Manager documenting the verbal notification to the employee, and the written adjudication memo will be delivered to the employee as soon as practicable.

- d. If the adjudication is **Sustained**, the adjudication memo will specify what misconduct occurred and which section(s) of policy were violated.

1020.7.1 DISCIPLINE

- a. Prior to administering any discipline, the reviewing supervisor will:
1. Check the involved employee's personnel file.
 2. Check the Department's discipline record in IA.
 3. Check with the Employee Resource Center for comparable discipline for similar misconduct.
 4. Consult with his or her supervisor and Division Manager on the appropriate level of discipline.
 5. Prepare a memo of proposed discipline and forward it to the Chief of Police via chain of command.
- b. After the Chief of Police makes a final decision regarding appropriate discipline, any discipline warranted will be administered as soon as practicable. If the discipline involves due process, that will be done by the involved employee's Division Manager, or designee. The department is committed to progressive discipline when appropriate and applicable.
- c. The employee will be allowed to look at the investigative file except for confidential information relating to another employee and other information subject to other lawful confidentiality requirements. The employee's legal or association representative also has the right of access to information in accordance with Oregon law and any applicable collective bargaining agreement.
- d. Any written comments submitted by the employee will be included in the investigative file and the employee's ERC personnel file.
- e. Once a service complaint, incident review, allegation of misconduct, allegation of criminal conduct, or allegation of respectful work environment violation is investigated and the complaint or allegation has been *sustained*, the employee may receive corrective action (not considered discipline), or disciplinary action.
- Examples of corrective action can be, but are not limited to: coaching, documented counseling, or remedial training.
 - Examples of disciplinary action are, but are not limited to: oral reprimands, written reprimands, suspensions, overtime restrictions, demotion in rank, or termination.
- f. If an employee retires or resigns while under administrative investigation the Chief of Police may elect to close the file administratively or to continue the investigation without the employee available for any potential discipline.

- g. The department will notify Oregon Department of Public Safety Standards and Training in the change in employee status, if applicable.
- h. Investigations of probationary employees will follow the structure of the bargained protocols and this policy in the same way they would if the employee was non-probationary. A probationary employee investigated for a service complaint, allegation of misconduct, or of criminal conduct will still be considered an *at-will* employee, which means they have no property interest in City employment and may be terminated without prior disciplinary warning.
- i. Field Training and Evaluation Program failure will not be considered discipline.

1020.7.2 MEDIATION

- a. The Auditor is authorized to determine that a complaint is appropriate for mediation or facilitated conversation and, upon the voluntary agreement of the involved parties and approval of the Chief of Police, will coordinate the resolution of these cases.
 - 1. Mediation is an alternative to the investigation, adjudication, and disciplinary process; if the parties agree and complete mediation, the investigation, adjudication, and disciplinary process will end. If the complainant agrees to mediation and later withdraws or fails to participate, the complaint is dismissed by the Auditor.
 - 2. A facilitated conversation may, but does not necessarily, result in termination of the investigation, adjudication, and disciplinary process.
- b. If the Auditor determines that a complaint may be appropriate for mediation, the complaint and information gathered during the preliminary investigation will be forwarded to IA. IA will research the employee's IA record and forward the information to the Chief of Police. The Chief of Police may approve or disapprove the mediation/facilitated conversation recommendation by the Auditor.
- c. If the Chief of Police approves of the recommendation, the parties will be contacted in order to inquire whether they want to participate. All participation is voluntary and confidential. If the Chief of Police disapproves of the recommendation, the matter will be investigated and adjudicated.
- d. Police employees who voluntarily enter into mediation will be required to participate and adhere to the guidelines established by the mediator during the mediation. If an employee fails to cooperate and participate, the mediation will be suspended and the complaint will be returned to the Auditor for further action.
- e. Refusal to enter into mediation will not result in any negative employment action against the employee.
- f. Mediation should generally take one session, although on rare occasions a second session may be required. The employee will be compensated for time spent in mediation.

- g. In mediation, the employee can make no agreement that commits the organization or anyone not involved in the mediation to take any action.
- h. Each party has the right to say whatever he or she wishes during the mediation. Statements made by the employee during mediation cannot serve as the basis for any additional allegations of misconduct against the employee and may not serve as the basis for discipline, provided that the employee has followed the guidelines established by the mediator.

1020.7.3 REPORTING PARTY NOTIFICATION

- a. Notification of the adjudication to the reporting party will be made by the Chief of Police. This notice will indicate the findings, however, will not disclose the nature of discipline, if any, imposed.
- b. The Auditor is authorized to make his or her own notification to the reporting party.

1020.7.4 FILE CLOSURE

- a. The investigating supervisor and chain of command will review the case for any issues that may indicate a need for modification of training and/or policy. Any such issues will be identified in a memo or e-mail forwarded to the Professional Standards Manager.
- b. IA will maintain internal affairs investigation files, including those pertaining to mediation. Prior to filing, each case should be reviewed to ensure that only relevant information is included.
- c. An employee who was the subject of an investigation may review the completed investigative report, except for confidential information relating to another employee and other information subject to other lawful confidentiality requirements.
- d. Retention of investigative files will follow these guidelines, which generally exceed the minimum requirements outlined in *OAR Chapter 166*.
 - 1. Investigative files that are adjudicated as *Sustained* and result in termination of an employee will be retained permanently. Other investigative files that are adjudicated as *Sustained* will be retained for ten years. Investigative files where the employee resigns during investigation and prior to adjudication, the file may be retained as though sustained, if appropriate.
 - 2. Investigative files that are not adjudicated as *Sustained* will be retained for five years.
 - 3. Investigative files related to incident reviews, policy complaints, service complaints and inquiries will be retained for three years.
- e. Except for disciplinary memos resulting from investigation of an allegation, no investigative reports will be filed in an employee's personnel file.

1020.8 CONFIDENTIALITY OF PERSONNEL FILES

All investigations of personnel complaints will be considered confidential personnel files. The contents of such files will not be revealed to other than the involved employee or authorized personnel except pursuant to a lawful process.

Disciplinary action resulting from sustained complaints will be maintained in the employee's personnel file. Complaints, and any investigative reports, will be maintained by the Internal Affairs Unit apart from the employee's personnel file.

1020.9 ANNUAL REVIEW

The Professional Standards Manager will conduct an annual review of complaints received. The review will summarize the types of complaints received, identify trends, and determine whether any policy or training changes are needed that have not already been accomplished. The review will be completed and a written report submitted to the Chief of Police for complaints received during the previous calendar year.



Chris Skinner
Chief of Police