

Personnel Complaints

1020.1 PURPOSE AND SCOPE

State **MODIFIED**

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Indio Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1020.2 POLICY

Best Practice **MODIFIED**

The Indio Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1020.3 PERSONNEL COMPLAINT DEFINITIONS

Best Practice **MODIFIED**

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Citizen/External Complaint - An allegation of member misconduct from any source outside the department.

Internal Complaint - An allegation of misconduct against a member from any source within the department.

1020.3.1 COMPLAINT CLASSIFICATIONS

Best Practice **MODIFIED**

The Professional Standards Unit, in conjunction with the Chief of Police, shall review all new complaints and classify them for the purposes of investigation:

Supervisory Intervention - These are complaints that, even if the events occurred exactly as described, signify a training gap or minor performance issue instead of misconduct on the part of the involved employee that would not result in any action more significant than a verbal admonishment or counseling. The complaint will be assigned to the appropriate supervisor for investigation and follow up. The follow up will include reviewing the circumstances with the complainant and the involved officer(s), providing corrective counseling to the involved

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

officer(s) if necessary, providing additional information to the complainant regarding policy and procedures, and to ensure that additional training is provided if a training gap was identified during the investigation.

The supervisor will document all of the follow up steps taken during the investigation, to include whether or not the complainant was satisfied with the department's efforts to resolve the complaint. All documentation will be forwarded to the Professional Standards Unit. The Professional Standards Unit Sergeant will forward the completed investigation to the Division Chief of the involved member. The Division Chief will determine if the complaint can be closed, or if further investigation and/or follow up is necessary.

All supervisory interventions will be assigned a case number and all related documentation will be maintained by the Professional Standards Unit. The supervisory intervention classification will not be used for instances involving a complaint of excessive force, dishonesty, sexual assault, or any other circumstance where a sustained finding would warrant disclosure pursuant to Penal Code 832.7.

Administrative Investigations - These investigations are more complex and involve more serious allegations, including all excessive use of force allegations. Administrative investigations will be assigned a case number and all related documentation will be maintained by the Professional Standards Unit.

1020.3.2 SOURCES OF COMPLAINTS

Best Practice **MODIFIED**

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1020.3.3 PUBLIC INQUIRIES

Agency Content

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule. These inquiries may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department. However, people with inquiries of this nature should be given an explanation of the department policy, procedure, or

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

issues involved. If further explanation appears necessary, the person should be referred to a supervisor or the department unit generally responsible for the subject matter of the inquiry.

1020.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

Best Practice

1020.4.1 COMPLAINT FORMS

Best Practice MODIFIED

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other City facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1020.4.2 ACCEPTANCE

State MODIFIED

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. In cases where a complainant is turning in a written complaint at the lobby counter, Records staff should attempt to summon the Watch Commander or the appropriate supervisor, who if available should make an effort to speak to the complainant regarding the nature of the complaint during a recorded interview. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification and signatures may be obtained.

A complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7).

1020.4.3 AVAILABILITY OF WRITTEN PROCEDURES

State MODIFIED

The department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

1020.5 DOCUMENTATION

Best Practice MODIFIED

The department utilizes the software based programs Blue Team and IAPro to document and record personnel complaints and inquiries. Supervisors shall ensure that all complaints and inquiries are documented in the Blue Team and/or IAPro systems. The supervisor shall ensure that the nature of the complaint or inquiry is defined as clearly as possible.

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

For newly received personnel complaints and inquiries, an initial Blue Team entry should be made by the supervisor as soon as possible, and must be created before the end of the investigating supervisor's shift. Investigations held or assigned to a line level supervisor, will be completed within 10 calendar days from the date of the incident and forwarded to a lieutenant or next level supervisor. The investigations should include the following items as applicable: BWC footage, interviews, photos, reports, other documents as appropriate. Lieutenant must complete his or her review within 10 calendar days from receiving the investigation from the investigating supervisor. Lieutenant then forwards the completed review to the next level reviewer. Assistant Chief/Chief Administrative Officer (CAO) will complete their review and provide a recommendation to the Chief of Police. An employee must receive an extension from their supervisor in order to exceed the 10-day timeline. This timeline and routing process may be modified by the Chief of Police for cases where a formal administrative investigation will be assigned to the Professional Standards Unit or a supervisor.

All complaints and inquiries shall be documented in a manner that clearly describes the actions taken to address the issue. On an annual basis, the department should audit the records regarding personnel complaints and inquiries and send an audit report to the Chief of Police or the authorized designee.

1020.6 ADMINISTRATIVE INVESTIGATIONS

Best Practice MODIFIED

Allegations of misconduct will be administratively investigated as follows.

1020.6.1 SUPERVISOR RESPONSIBILITIES

State MODIFIED

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

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

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any personnel complaint, a complaint form and/or a Blue Team entry is completed before the supervisor goes off duty.
 - (a) The complaint will be directed to the Watch Commander of the accused member, via the chain of command, who will take appropriate action, which will include notifying the appropriate Division Chief and forwarding the complaint to the Office of the Chief of Police.
 - (b) In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

is at issue, a supervisor shall orally report the matter to the member's Division Chief or the Chief of Police, who will initiate appropriate action.

- (c) The supervisor who receives the complaint, and is responsible for the Blue Team entry, shall send an email via Outlook to the IPD Executive Staff and Professional Standards Unit Sergeant or designee, making all aware of the pending complaint. The purpose of this email is to notify Executive Staff that a complaint was received on said date, and a Blue Team entry was generated for further investigation.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
 - (a) Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Watch Commander and Chief of Police are notified via the chain of command as soon as practicable, or at the very latest before the end of that work day.
- (e) Promptly contacting the Department of Human Resources and the Watch Commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Making and documenting reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
- (g) When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (h) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (i) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1020.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

State

Whether conducted by a supervisor or a member of the Professional Standards Unit, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Indio Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - 1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 - 2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

1020.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Best Practice **MODIFIED**

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary of Allegations - List the allegations separately, including applicable policy sections.

Evidence - The evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Findings - List a disposition for each allegation. In most cases the information supporting the disposition should be detailed in the previous sections. If the disposition provided is not clearly discernable from the evidence provided, a brief statement supporting the finding should be provided.

Mitigating Factors - Although we must attempt to be somewhat consistent in the issuance of discipline, there must be consideration given to any mitigating circumstances involving the incident itself or the employee involved. Mitigating circumstances are those facts or other considerations which tend to support a lesser recommendation on the type of disciplinary action to be used.

For example, what may seem like an obvious “day-off” violation might be mitigated to a written reprimand because of the employee’s trouble-free past. Discipline should be tailored to the individual as much as possible. This category could also include some of your opinions regarding why you feel there are mitigating circumstances.

Recommendation - In most cases, the recommendation will be to forward the investigation report to the Division Chief of the subject employee(s) for review and final disposition.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1020.6.4 DISPOSITIONS

State **MODIFIED**

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

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - A final determination following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1020.6.5 COMPLETION OF INVESTIGATIONS

State **MODIFIED**

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

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

Absent good cause, the investigator should be provided with a due date at the time an investigation is assigned. The standard department due date should be 90 days from the time of assignment.

If special circumstances exist, a longer or shorter period of time may be set to meet the needs of the department. The investigator should never exceed the due date without prior written approval from their Division Chief. Good cause for a due date not being assigned would include cases that involve pending civil or criminal litigation.

1020.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

Best Practice

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

1020.7 ADMINISTRATIVE SEARCHES

State

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

1020.7.1 DISCLOSURE OF FINANCIAL INFORMATION

State

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

1020.8 ADMINISTRATIVE LEAVE

Best Practice **MODIFIED**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1020.9 CRIMINAL INVESTIGATION

State **MODIFIED**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

The Indio Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1020.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Best Practice MODIFIED

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

1020.10.1 DIVISION CHIEF RESPONSIBILITIES

Best Practice MODIFIED

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

The Division Chief may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

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

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

1020.10.2 CHIEF OF POLICE RESPONSIBILITIES

State MODIFIED

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

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

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

- (a) Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
- (b) If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

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

1020.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

State

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

1020.10.4 NOTICE REQUIREMENTS

State

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

1020.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

Best Practice

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

Indio Police Department

Indio PD Policy Manual

Personnel Complaints

1020.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

Best Practice

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1020.13 POST-DISCIPLINE APPEAL RIGHTS

State MODIFIED

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a Brady list or is otherwise subject to Brady restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such Brady evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

1020.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

State MODIFIED

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304). At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

1020.15 RETENTION OF PERSONNEL INVESTIGATION FILES

Best Practice

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.