

AURORA POLICE DEPARTMENT DIRECTIVES MANUAL

10.3	EFFECTIVE: September 1, 1998	_____ Daniel J. Oates, Chief of Police
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SUBJECT: COMPLAINT AND DISCIPLINE PROCEDURES FOR NON-SWORN MEMBERS		
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10.3 COMPLAINT AND DISCIPLINE PROCEDURES FOR NON-SWORN MEMBERS

The following procedures apply to all allegations of misconduct involving career service members. Complaints determined to be related to discrimination or harassment will be handled in accordance with Directive 10.9 - Discrimination And Harassment Complaint Procedure.

Pursuant to city charter, the Chief of Police determines discipline within the Police Department. The Internal Affairs Section is supervised directly by the Chief. Nothing in this order precludes the Chief from monitoring or directly supervising an Internal Affairs investigation, from delegating this responsibility to the Deputy Chief or another senior command officer or from consulting with the Division Chiefs or Deputy Chief about an investigation or proposed discipline at any stage in the process. However, the Chief is expected to reserve final judgment on discipline at any stage in the process.

10.3.1 Definitions

Complaint – an allegation of misconduct involving a member of the Aurora Police Department.

Active Case – An Internal Affairs Case is considered active when the Chief of Police or designee orders the investigation. The case remains active until the conclusion of all appeals to the Career Service Commission on all sustained violations for all members involved in the case or there are no findings of sustained violations for any member.

10.3.2 Complaint Procedures

Most allegations of misconduct originate from either citizens, government officials or from other members within the organization, including sworn and non-sworn members, peers and supervisors.

When feasible, all supervisory inquiries and administrative investigations should be conducted by the immediate supervisory chain of the subject member.

(a) Allegation by Citizens

Department members will accept any complaint made by a citizen against any member of the department in a professional manner. Members may attempt to resolve the complaint, but will not attempt to dissuade any citizen from lodging a complaint against any member of the department.

Complaints will be taken from individuals providing there is sufficient factual information to justify the initiation of the process. If the person is under the influence of alcohol or drugs, the complaint may be deferred unless a compelling reason exists to initiate the Complaint Report process immediately.

Any non-supervisory member contacted by a citizen wishing to lodge an allegation against any member will immediately put the citizen in contact with a supervisor. If for any reason a supervisor is not immediately available, the member will obtain the citizen's name and phone number, the nature of the allegation, and forward this information to a supervisor as soon as possible, but prior to the end of shift.

If the complainant does not wish to speak to a Patrol Lieutenant or supervisor at the time of making the complaint, the member in contact with the citizen will provide the citizen a Complaint Report form and instructional brochure.

Any member may initiate the Complaint Report form. Members will accept any Complaint Report from a citizen.

All Complaint Reports will be routed directly to the Internal Affairs Section, to include reports mailed to the Department. The Internal Affairs Section will maintain a log of the complaints and retain a copy of the Complaint Report. The original Complaint Report will be forwarded to the member's appropriate Division Chief for an Initial Inquiry, at minimum.

On a monthly basis, the Internal Affairs Section Lieutenant will provide a report to the Chief of Police detailing the status of all Complaint Reports.

All information contained in a Complaint Report is considered confidential. Any member of the department who initiates or otherwise handles a Complaint Report will keep the information confidential.

Anonymous allegations will be accepted and investigated in the same manner as all other allegations.

(b) Allegations by Members

Members who wish to make an allegation against a career service member are authorized to either report directly to Internal Affairs Section (IAS), his / her

supervisor or the supervisor of the member. Members who initiate an allegation against another member will prepare the Complaint Report form, listing themselves as the complainant. The supervisor who receives the allegation will complete the Initial Inquiry in an expeditious manner. The complaining member will not indicate the existence of or divulge the contents of his/her allegation to any other agency, officer or individual, without proper authorization.

(c) Allegations by Government Officials

Allegations made by government officials will be handled in the same manner as those made by citizens.

(d) Allegations Contained in Legal Documents

If allegations of misconduct are contained in legal documents, e.g., Notices of Intent, Complaints, etc., the Chief will consult with the Office of the City Attorney before initiating an investigation.

If an allegation is made after legal documents have been received by the City, e.g., Notice of Intent, Complaint, etc., then no investigation will be initiated until the Police Department consults with the Office of the City Attorney regarding such investigation.

10.3.3 Initial Inquiry

Complaints will generally be assigned to the named member's immediate supervisor, however, a Command Officer may assign an Initial Inquiry to any supervisor dependent upon the circumstances of the case (e.g. conflict of interest).

Any supervisory or command member who receives an allegation against a career service member will conduct an Initial Inquiry to gather all necessary facts and information concerning the allegation, to determine if any law, ordinance, directive, standard operating procedure or other city policy may have been violated or a potential for a policy failure exists.

- a. The investigating supervisor will make reasonable attempts to contact and discuss the incident with the complainant(s). The investigating supervisor may elect to speak with witnesses and involved subject members to determine the scope and nature of the allegation. Whenever possible a written statement will be obtained from the complainant and other available witnesses. All written statements will be attached to the Complaint Report. During this inquiry, the investigating supervisor will determine if the allegation is merely a lack of understanding on the part of the complainant, as opposed to misconduct by the involved member.

- b. If a procedural or statutory explanation exists, the investigating supervisor will provide this information to the complainant. Should this information satisfy the complainant and the investigating member, no further formal reporting is required.
- c. A citizen's complaint based solely upon a dispute over the guilt or innocence of the complainant in the matter of a traffic violation or other summons, will be referred to the appropriate court. The member or investigating supervisor may provide information related to the court process, but should not discuss the details of the case.
- d. If the Initial Inquiry reveals that there is reason to believe that the member's conduct was inappropriate or violated a Department Directive or standard operating procedure and may face formal discipline greater than a written reprimand, the inquiry will transition to a Preliminary Administrative Investigation. In the event that a Complaint Report was not initiated, the investigating supervisor will complete the Complaint Report and forward a copy to the Internal Affairs Section.
- e. If the Initial Inquiry reveals the possibility of criminal conduct on the part of the member, the investigation will be handled in accordance with Department Directive 10.10: Criminal Investigations Involving Members. The investigating supervisor will forward the original documents of the investigation through the chain of command to the member's Division Chief. The Division Chief will ensure that copies of the Complaint Report and supporting documents are forwarded to the Chief of Police for assignment to the appropriate investigating unit.
- f. If the Initial Inquiry reveals a policy failure exists, the investigating supervisor will complete a summary of the events leading to the failure in a memorandum format and forward the summary to the Professional Standards Section for further review.
- g. The assigned investigating supervisor will complete the Initial Inquiry in an expeditious manner. The investigating supervisor's immediate Command Officer may grant appropriate extensions as necessary.

10.3.4 Preliminary Administrative Investigation

Once a supervisor's Initial Inquiry indicates that a directive or standard operating procedure may have been violated, and there is reason to believe the subject member may face formal discipline greater than a written reprimand, the subject member will be issued a Notice of Investigation (NOI) prior to being interviewed.

- a. Notice of Investigation

A member will be issued a NOI under the following circumstances:

- The member is the subject of an investigation by the IAS for an allegation of misconduct and has not previously been issued an NOI.
- The member is being interviewed by any supervisor for an allegation of misconduct in which the member is the subject of the investigation and the supervisor believes the investigation may result in formal discipline greater than a written reprimand.
- The member is required to submit financial disclosure statements.
- The member is required to produce any documentation, including memoranda, related to an allegation of misconduct investigation which may result in formal discipline greater than a written reprimand.
- The member is required to submit to any test, e.g. breath test, blood test, urine sample, hair follicle test, fitness for duty, etc., as deemed necessary for any internal investigation.

The NOI will include a synopsis of the incident under investigation outlining the specific nature of, and the member's status in, the investigation. The allegations of misconduct for which the member will be interviewed will be documented, not necessarily in policy specific language, in the space provided. Prior to an NOI interview, the member will review the NOI form, sign it and will be provided a copy of the signed and dated form. If during an interview additional allegations are identified, the supervisor will stop the interview, prepare an additional NOI and serve it to the subject member.

- Supervisors conducting Preliminary Administrative Investigations will not rely on a "blanket statement" to put the member on notice that other issues of misconduct will be investigated.
- b. The investigating supervisor of a Preliminary Administrative Investigation where an NOI has been issued will electronically record all relevant interviews with equipment provided by the Department. Subject members who are interviewed during a Preliminary Administrative Investigation may also electronically record or take notes of the interview.

Until the conclusion of the Preliminary Administrative Investigation, the investigating supervisor will retain all tapes, notes and reports. Subject members will not be allowed access to the investigative materials until the case has been concluded. In the event a formal investigation by IAS is authorized, all tapes, notes and reports will be forwarded to IAS. If a formal investigation

is not authorized, the subject member's notes and/or electronic recording of the NOI interview may be returned to the member.

- c. Supervisors receiving or initiating a Preliminary Administrative Investigation into an allegation of misconduct will complete the investigation in an expeditious manner. The investigating supervisor's immediate Command Officer may grant appropriate extensions as necessary.
- d. Allegations investigated at the Bureau/Section level will be forwarded to the involved member's Bureau/Section Command Officer through the chain-of-command upon completion. If the Bureau/Section Command Officer determines that the allegation can be handled at the Bureau/Section level, the investigative documents will be forwarded to the involved member's immediate supervisor for appropriate action.
 - Allegations that involve violations of policy or procedure, but have little affect on operations or create a small degree of risk and/or liability to the member or the department may be handled at the Bureau/Section level. Allegations of this nature may be handled with a Written Reprimand, Corrective Action Report, Performance Appraisal Entry or counseling, as appropriate.
- e. When the preliminary investigation shows that the events surrounding the allegation are of a magnitude that would require discipline greater than a Written Reprimand or require further investigation, the supervisor will notify the affected member's Bureau/Section Command Officer. The Bureau/Section Command Officer will forward a request for formal investigation through the chain of command to the Chief of Police.

Any allegation of misconduct not resolved at the Bureau/Section level will be a formal complaint. All formal complaints on non-sworn members may be handled in one of two methods:

- 1) By following the City of Aurora Personnel Policies and Procedures Manual Section 4-2 "Disciplinary Action".
- 2) A recommendation that the formal complaint be investigated by the Internal Affairs Section.

When any allegation of misconduct is resolved at the Bureau/Section level, the Bureau/Section Command Officer or designee, will notify the complaining party of the status of the allegation.

If the complainant indicates they are not satisfied with the resolution of the allegation, the complainant will be informed they may contact the person at the next level in the chain of command and will be given the appropriate telephone number to contact.

10.3.5 Formal Complaints

The Internal Affairs Section will investigate formal complaints upon the order of the Chief of Police. Formal complaints may include allegations of misconduct of a nature conspicuous in scope and/or effect and may cause a considerable degree of risk and/or liability to the member, the Department, its reputation or its operations. Formal complaints may include repeated minor violations of policy or procedure.

The Internal Affairs Section (IAS) has the authority of the Chief of Police to conduct investigations without interference or obstruction by any member. The Chief, or designee, may assign the investigation to any member. Formal investigations will be conducted according to IAS Standard Operating Procedures.

When a complaint is received, IAS will notify the complaining citizen, member or government official in writing, that the complaint has been received by the Internal Affairs Section and status of the complaint. Upon resolution of the complaint, IAS will notify the complainant of the disposition.

If a formal IAS investigation is authorized by the Chief of Police or designee and includes the charge of 14.1.4 (Conformance to Law) and the matter was also the subject of a criminal investigation, and the criminal investigation has been closed, the entire criminal investigation will be attached as an addendum to the IAS case. Identifying information about witnesses, victims and confidential sources and methods may be redacted from the copy of the criminal investigation that is appended to the IAS case at the direction of the Chief.

If a formal IAS investigation is authorized by the Chief of Police or designee and does not include the charge of 14.1.4 (Conformance to Law) and the matter was also the subject of a criminal investigation, the criminal investigation will not be attached as an addendum to the IAS case. The member will be informed that a criminal investigation was conducted. If the member requests a copy of the criminal investigation, one will be provided. If provided, identifying information about witnesses, victims and confidential sources and methods may be redacted from the copy of the criminal investigation at the direction of the Chief.

10.3.6 Formal Complaint Dispositions

All formal complaints will be assigned one of the following final disposition codes:

- (a) **Unfounded** - A finding which indicates the act(s) complained of did not occur or failed to involve police personnel.
- (b) **Exonerated** - A final finding of a complaint of misconduct which indicates the alleged action did occur but that it was justified, lawful, and/or proper.

- (c) Not Sustained - A final finding of a complaint of misconduct which indicates an investigation failed to discover substantial evidence to prove or disprove the allegations made in the complaint.
- (d) Policy Failure - The allegation is true, although the action of the agency or the officer was not inconsistent with existing agency policy.
- (e) Sustained - *A policy violation will be sustained if, after considering all of the supporting and contradicting evidence, violation of the policy has been established by a preponderance of the evidence. The term "preponderance of the evidence" means that the proposition is more probably true than not.*

All formal complaints will be maintained in a complaint file in the Internal Affairs Section.

Any formal complaint with a disposition code of policy failure or sustained will require a statement of action taken.

10.3.7 Scope of Authority for Corrective Actions and Discipline

- (a) All Supervisors may impose the following Corrective Actions:
 - Counseling.
 - Training.
 - Oral Reprimand.
 - Performance Appraisal Entry.
 - Corrective Action Report.
- (b) Non-sworn supervisors may recommend disciplinary action be imposed but will not formally discipline.
- (c) Command Officers may recommend disciplinary action be imposed and may issue a written reprimand if appropriate.
- (d) Command officers may impose emergency relief from duty.
- (e) The Chief of Police may impose the following discipline, subject to provisions in City Charter and the City Personnel Manual:
 - Written Reprimand.

- Relief from Duty.
- Reimbursement.
- Fine.
- Suspension.
 - The Chief may, at his or her discretion, authorize that the obligation to fulfill suspension time be met by substituting a commensurate reduction in annual leave time.
- Demotion in rank or grade.
- Dismissal from the Department.

No FLSA exempt member's pay shall be reduced for disciplinary reasons in any manner that would be inconsistent with the FLSA salary test.

When the member's misconduct results in dismissal from the Department the following information will be made available to the member:

- Reason for the dismissal.
- Effective date of the dismissal.
- Status of accumulated fringe and retirement benefits after the dismissal.
- Content of the member's employment record in relation to the dismissal.

10.3.8 Records of Performance Appraisal Entries, Written Reprimands and Letters of Adverse Action

- (a) Performance Appraisal Entries - Performance Appraisal Entries are not discipline and can be used to note either poor performance or superior performance. The Performance Appraisal Entries will be maintained in the supervisor's employee file for three years plus the current evaluation year.

Performance Appraisal Entries will not be forwarded to the member's personnel file.

- (b) Letters of Proposed Adverse Action, Letters of Adverse Action and Written Reprimands – All disciplinary letters/orders will be forwarded to the Internal Affairs Section (IAS) following the conclusion of the investigation and issuance

of the applicable orders. All supervisor documentation concerning disciplinary letters/orders will be forwarded to the IAS along with the order. The Equal Employment Opportunity (EEO) office will be required to submit only the disciplinary letter/order to the IAS for maintenance. Supporting documentation for EEO initiated disciplinary orders will not be forwarded to the IAS. The IAS will be responsible for forwarding discipline orders to the member's permanent 201 file.

Employees may request Written Reprimands be removed from their 201 file after two (2) years. Written reprimands are not subject to appeal. All disciplinary orders will be maintained by the IAS according to State Statutes that govern police administrative action records.

The Internal Affairs Section will review all preliminary investigations resulting in formal discipline for completeness of investigation and continuity of discipline.

10.3.9 Appeal of Disciplinary Action

Fines, Suspensions, Reimbursements, Demotions or Dismissals for all career service members are subject to appeal as stated in the City of Aurora Personnel Policies and Procedures Manual.

10.3.10 Individual Member Responsibility

All members of the Department will perform the duties and assume the obligations of his/her rank in the reporting of complaints or allegations of misconduct.

Members are required to cooperate in a department investigation and to answer questions by or render material and relevant statements to a supervisor or Internal Affairs Investigator.

Any member may be required to submit to a medical or laboratory examination at the agency's expense when the examination is specifically directed and narrowly related to a particular internal investigation.

Any member may be required to be photographed, to participate in a line-up, to submit to a fingerprint comparison, and/or to submit a financial disclosure statement when the actions are material to a particular internal investigation.

Members may be required to be photographed or fingerprinted for records kept by the Chief of Police and/or the Internal Affairs Section.

10.3.11 Supervisor Responsibility

- a. Supervisory and command members will initiate an Initial Inquiry or Preliminary Administrative Investigation, as appropriate, when the misconduct observed or alleged is within the scope of their authority.
- b. Supervisory and command members who receive or observe an allegation of misconduct will complete the Initial Inquiry in an expeditious manner.
- c. Supervisory and command members conducting a Preliminary Administrative Investigation will complete the investigation in an expeditious manner.
- d. Supervisory and command members investigating a Complaint Report will complete the Initial Inquiry and Preliminary Administrative Investigation, as expeditiously as possible. The completed Complaint Report and all supporting documentation will be forwarded to the appropriate Division Chief. The Division Chief will ensure that copies of the Complaint Report and supporting documents are forwarded to the Internal Affairs Section.
- e. Supervisory and command members discovering potential policy failures as a result of an investigation will complete a summary memorandum and forward the information to the Professional Standards Section in an expeditious manner.
- f. Whenever a Complaint Report is initiated, the named member's immediate supervisor will note the complaint and the results of the inquiry or investigation in a Performance Appraisal Entry (PAE) for inclusion in the member's current Performance Appraisal Log (PAL).
- g. Command personnel who receive a completed Internal Affairs Report or Complaint Report through the chain of command will review, make recommendation(s), if any, and forward to the next level in the chain of command within five working days.

10.3.12 Wearing of Weapons

Members will not be armed during interviews with Internal Affairs Investigators, or during pre-disciplinary/disciplinary hearings with the Chief of Police or designee.