

6.3 PERSONNEL

COMPLAINT POLICY

6.3.010PURPOSE

To provide guidelines for uniform reporting of Personnel Complaints.

6.3.020POLICY

A relationship of trust and confidence between all members of the police department and community we serve is essential to effective law enforcement. Police officers must be free to exercise their best judgment and to initiate law enforcement action in a reasonable, lawful and impartial manner without fear of reprisal. So, too, enforcers of the law have a special obligation to respect meticulously the rights of all persons.

The Downey Police Department acknowledges its responsibility to establish a system of complaint and disciplinary procedures which not only will subject the officer(s) to corrective action when they conduct themselves improperly, but will also protect them from unwarranted criticism when they discharge their duties properly.

It is the purpose of these procedures to provide a prompt, just and expeditious disposition of complaints regarding the conduct of members and employees of the department.

6.3.030RECEIVING COMPLAINTS

Source of Complaints

1. A department employee becoming aware of alleged misconduct shall immediately notify a supervisor.
2. A supervisor shall receive a complaint from any source alleging an employee has violated Department Rules and Regulations which if proven true would result in disciplinary action.
3. Anonymous complaints and third-party complaints shall be accepted and may be investigated at the discretion of the Chief of Police. Such determination will be based upon a variety of factors, including but not limited to:
 - a. severity of allegations, and
 - b. facts tending to establish veracity of the complainant.

The preliminary report of third-party or anonymous complaints shall be initially reported by Inter-Office Memorandum to the affected employee's Commanding Officer and not reduced to the Personnel Complaint Form until further investigation substantiates the likelihood that the incident actually occurred. If future investigation tends to substantiate the complaint, a Personnel Complaint Form shall be completed.

Form of Complaint

A complaint may be filed in person, or by writing, or by telephoning a supervisor of the department. Every effort shall be made to receive the complaint in person from the complainant.

Personnel Complaint Validity

1. A personnel complaint shall not be prepared unless the alleged misconduct or job performance is of a nature which, if true, would normally result in disciplinary action.
2. When the allegation is determined to be a complaint regarding proper/improper implementation of a City or department policy or procedure, and the matter cannot be explained to the reporting person's satisfaction by the on-duty Watch Commander/Section Officer-in-Charge, the complaint shall be referred to the Commanding Officer having jurisdiction over the subject matter.
3. When a personnel complaint is received from a person who is intoxicated, the complaint shall be reported by memo to the accused employee's Commanding Officer. The Commanding Officer shall cause the complainant to be re-interviewed at the earliest opportunity, when the complainant is sober, to determine if the complaint should be reported on the Personnel Complaint Form.

Complaint Documentation

1. Complaints of alleged misconduct shall be documented by a supervisor on the City of Downey Police Department Personnel Complaint Statement of Facts Form (DPA 131). The supervisor shall clearly define the exact complaint being alleged.
2. The complainant should write the narrative of his/her complaint in his/her own handwriting utilizing the DPA 131 form. This is desirable but certainly not mandatory. If desired, a suitable location shall be provided for purposes of completing the form, undisturbed. If the handwriting is illegible, he may be afforded the opportunity of dictating the complaint to the supervisor accepting the complaint. The complainant's signature should be obtained on any handwritten or dictated statement.

6.3.040 CITIZEN OR INTERNAL COMPLAINT PROCEDURE

Supervisor's Responsibility for Documenting Personnel Complaint

It shall be the responsibility of any supervisor becoming aware of misconduct, which if sustained would result in disciplinary action, to initiate a personnel complaint. The DPA 131 form shall be used to initiate the personnel complaint investigation.

Supervisor's Responsibility for Investigating a Complaint

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the employee's immediate supervisor. However, the Chief of Police may direct that it be investigated by another supervisor. If the initial complaint is determined to be of a potentially serious nature, the supervisor taking the personnel complaint shall ensure that the concerned Watch Commander, Commanding Officer and the Chief of Police are immediately notified.

Routing of Complaints Alleging Employee Misconduct

Initiating the Complaint

A supervisor accepting a complaint or initiating a complaint shall complete the top portion of the form, including all information relative to the complaint. The original complaint will then be directed to the Commanding Officer of the accused employee, via the chain of command, who will forward the complaint form to the Commanding Officer, Administrative Division. This shall also be the procedure when the complaint is taken, investigated and dispositioned simultaneously.

Commanding Officer, Administrative Division

The Commanding Officer, Administrative Division shall assign a personnel complaint investigation number and indicate it on the complaint form.

The Commanding Officer, Administrative Division shall return the original complaint, the personnel complaint investigation number, and any related materials to the Commanding Officer of the accused employee and submit one copy of the complaint to the Chief of Police.

Commanding Officer of the Accused Employee

The Commanding Officer of the accused employee shall return the complaint package to the Watch Commander/Section Officer-in-Charge for purposes of directing the investigation.

Watch Commander/Section Officer-in-Charge

The Watch Commander/Section Officer-in-Charge shall direct the investigation and forward a completed report with recommendation to the Commanding Officer of the concerned employee.

Commanding Officer of the Accused Employee

The Commanding Officer shall be responsible for the below items and shall obtain the Chief of Police's approval for the recommended disposition of the complaint. After the below items have been completed, the complaint package shall then be forwarded to the Commanding Officer, Administrative Division.

- a. Prepare the Disciplinary Report (Notice of Intent), when applicable, for appropriate signatures.
- b. Coordinate subsequent grievances, Skelly hearings, etc.
- c. Notify the complainant that the complaint has been received and investigated.

Commanding Officer, Administrative Division

The Commanding Officer, Administrative Division shall be responsible for:

- a. Collecting and filing all pertinent documents of the incident.
- b. Causing all reports, when applicable, to be placed in the personnel file of the disciplined officer.

6.3.050 INVESTIGATION OF PERSONNEL COMPLAINTS

Report by Investigating Supervisor

1. All complaints shall be reduced to writing. The investigation report shall be directed to the Commanding Officer of the accused employee from the investigating supervisor.
2. The investigation shall begin with the date and time the investigating supervisor received the assignment to investigate the complaint and conclude with the applicable policy that was violated.
3. All pertinent information shall be included in the body of the report. If it is necessary to attach a document for reference, it shall be incorporated as an appendix and so labeled.
4. Interviews of witnesses and involved officers shall be conducted separately and recorded whenever possible. The investigating supervisor shall personally interview the officer and include the interview in the investigation portion of the report. Personal contact and interviews should be achieved whenever possible.
5. The format for the investigation should include the following categories:
 - a. Brief
Brief synopsis of the incident.
 - b. Allegation(s)
As a result of the Investigator's understanding of the incident, allegations that correspond with Rules and Regulations; i.e.,

It is alleged that Officer Smith violated Rules and Regulations Section 123456.

The complainant alleges that Officer Smith violated Rules and Regulations Section 123456.

c. Investigation

Statements of persons relevant to the investigation and other investigative steps taken. Name, address, and telephone number of persons interviewed, or name and assignment of Department personnel is to be included.

d. Attachments

Supporting documents as may be necessary.

6. Complaint investigations shall be detailed, complete, and contain, if applicable, but not be limited to, all of the following items:
- a. Identification of all involved employees (whenever possible).
 - b. Names, addresses and telephone numbers of all witnesses and their statements (indicate the times, locations and business/residence telephone numbers where witnesses shall be available for re-interview). When possible, all interviews shall be tape recorded.
 - c. Visual examination for trauma, medical treatment for actual or alleged injury.
 - d. Photographs (utilize color film when appropriate).
 - e. Inspection of object alleged to have caused injury (objects should be photographed and, when practicable, retained).
 - f. Administer appropriate sobriety tests, if required.
 - g. In the case of face-to-face interviews with complainants, it is important to take note of his or her condition: Sobriety, under the influence of medication, mental disorder, etc.

Completed Investigation Report

1. The Watch Commander/Section Officer-in-Charge shall ensure that the investigation is complete and shall forward the completed report with recommendation through the chain of command to the Commanding Officer of the accused employee.
2. The format for the completed report should include the following categories:
 - a. Brief

Brief synopsis of incident.

b. Allegation(s)

Act(s) of misconduct alleged against the employee

c. Summary of Investigation

Synopsis of investigating supervisor's report

d. Recommendation(s)

Recommended disposition(s) of allegation(s) as outlined in this order, recommended discipline (if warranted)

Time Limit

Every effort will be made to complete complaint investigations within thirty (30) days. However, the complexity of the investigation and unavailability of witnesses can properly extend this goal.

Revised Section 6.3.050 – 09/03)

6.3.060 PERSONNEL COMPLAINTS: CLASSIFICATIONS

- A. For the purpose of disposition, each allegation(s) shall be classified as follows:

Unfounded

When the investigation discloses the act(s) complained of did not occur or did not involve department personnel.

Exonerated

When the investigation discloses the act occurred, but that the act was justified, lawful and proper.

Not Sustained

When the investigation discloses that there is insufficient evidence to sustain the complaint.

Sustained

When the investigation discloses that the act complained of did occur and constitutes misconduct.

Misconduct Not Based on the Complaint

When the investigation disclosed misconduct or improper job performance that is not part of the original complaint.

- B. Prior to making a recommendation for classification, the supervisor must determine that the evidence will clearly prove his recommendation. The best evidence, of course, is physical evidence and uninvolved witnesses to the act.

6.3.070 DISPOSITION/DISCIPLINARY ACTION

The Chief of Police may accept the classification and recommendation for disciplinary action or may modify the findings. The final responsibility for all disciplinary action is vested in the Chief of Police or his designee.

6.3.080 ADMINISTRATIVE DIVISION PERSONNEL COMPLAINT FILES

- A. All reports pertaining to personnel complaint investigations are confidential and shall be kept in secured files separate from other employee personnel files. Other than the disciplined employee and the Chief of Police, only the Commanding Officer, Administrative Division or his designee shall have access to these files. If, however, the Chief of Police concludes that the investigated employee's Commanding Officer should have access to the file in question with a job related issue, that may be done.
- B. Should it be necessary to disclose aspects of the file to other supervisors, it shall be done only on a need-to-know basis, at the direction of the Chief of Police.
 - 1. Employees may sign a waiver authorizing the release of information.
- C. File Retention
 - 1. The Commanding Officer, Administrative Division, shall maintain a Personnel Complaint Index on each department employee. The following information shall be included in the Personnel Complaint Index:
 - a. Date complaint originated
 - b. Personnel Complaint number
 - c. Complainant
(Complainant's name when complaint originates from outside the department or "Department" when complaint originates from within the department.)
 - d. Type of complaint/allegations
 - e. Classification of complaint
 - f. Corrective action taken (if any)
 - 2. All Sustained personnel complaints shall be retained in the employee's personnel file for five years from the date of adjudication at which time they shall be destroyed in accordance with city records destruction policies.

3. All complaints that are not classified as Sustained shall be maintained by the Commanding Officer, Administrative Division, for five years at which time they shall be destroyed in accordance with city records destruction policies.