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## CSU FULLERTON POLICE DEPARTMENT GENERAL ORDER NUMBER 2-1

### INTERNAL AFFAIRS INVESTIGATIONS [CALEA 1.2.9c]

**SUBJECT:** Procedures for Investigation of Complaints Against Department Members

**PURPOSE:** A relationship of trust and confidence between members of the Department and the community is essential to effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a responsible, lawful and impartial manner without fear of reprisal.

Penal Code Section 832.5 requires that any department that employs peace officers establish a procedure to investigate citizens' complaints against its personnel and make a written description of the procedure available to the public. Every person has a right to file a complaint and all alleged or suspected violations of law, ordinances, Department orders and University rules must be investigated.

The University Police Department acknowledges its responsibility to establish a complaint system and disciplinary procedures, which not only will subject the officer to corrective action when there is improper conduct, but also will protect the officer from unwarranted criticism when official duties are properly discharged. [CALEA 52.1.4]

**POLICY:** It is the policy of this Department to investigate all complaints against the Department or its employees, including anonymous complaints and provide prompt, just, open and expeditious disposition of complaints regarding the conduct of officers and employees of this Department. [CALEA 52.1.1]

#### **PROCEDURE:**

- I. Classification of Complaints – All complaints will be classified in one of two ways:
  - A. Internal Complaints
    1. These complaints are initiated internally by any employee of the University Police Department. Internal complaints are the result of observed violations of Department general orders, University policy or any applicable state law. [CALEA 52.2.1a]
    2. The investigative process for review of internal complaints will be determined by the seriousness of the alleged offense. Minor violations (infractions) of general orders and University policy will normally be investigated by the employee's supervisor, while major violations will be

reported through the chain of command to the Chief of Police and will be assigned for investigation through the Internal Affairs function.

[CALEA 52.2.1a]

3. Any internal complaint that could potentially result in discipline beyond an oral or written counseling must be referred to the Command Staff person in the employee's chain of command for investigative action. The Command Staff person will notify the Chief of Police, either by email, telephone or in person, of any internal complaints that they receive.
4. Internal complaints are usually documented on a memorandum form and will be forwarded to the Administrative Captain for inclusion in the Internal Affairs files.

#### B. External Complaints

1. An allegation of misconduct initiated by a citizen's complaint or any complaint received from a member of the community outside of the University Police Department. These complaints also include anonymous complaints.
2. External complaints will be brought immediately to the attention of the Chief of Police and they will be assigned for investigation by the Chief of Police.
3. Most external complaints will be investigated by the Command Staff, as part of the internal affairs function.
4. External complaints are usually documented on a Citizen's Complaint Form, but they may be documented on a memorandum form, a letter from a complainant, a phone call, or an email.

#### II. Definitions

- A. **Complaint** – A statement made alleging that a Department member (sworn or non-sworn) has engaged in an act constituting misconduct. Complaints can be made by members of the public and Departmental personnel.
- B. **Complainant** – The person who files a complaint with the Department alleging the commission of a major violation or infraction by a member or members of the Department, and includes any aggrieved party and any person or group who assists in filing the complaint.
- C. **Conclusions/Findings** – Results of an investigation of any allegation including observations and conclusions of the investigating officer.
- D. **Disposition** – The status assigned to a case by the Chief following the conclusion of the investigation.

- E. Infraction – A violation of Departmental rules and regulations defining transgressions that are not major violations.
- F. Major Violations include:
  - 1. Any violation of statutes and ordinances defining criminal activity.
  - 2. The use of unnecessary or excessive force.
  - 3. Abuse of authority.
  - 4. Conduct that violates a person’s civil rights.
  - 5. The use of abusive or insulting language or conduct, which is derogatory of a person’s race, religion, lifestyle, or national origin.
- G. Member – Both sworn and civilian employees of the Department (includes temporary and part-time positions).
- H. Misconduct – Under these procedures, it is shown by a preponderance of the evidence that a member of the Department has;
  - 1. Violated any rule, procedure, or lawful order of the Department, the university, or CSU system.
  - 2. Violated any law, whether codified by city/county statute, state or federal statute, or constitutional provision.
- I. Removal – The termination of a member’s employment with the Department.
- J. Rules and Regulations – The administrative acts promulgated by the Chief that are designed to regulate Departmental standards of conduct and appearance.
- K. Suspension – The temporary removal of a member from active employment for a definite period of time.
- L. Witness – A person who can produce evidence relevant to an alleged major violation or infraction.

### III. Receiving Complaints

Allegations of misconduct may be received at any time of the day or night and may originate from within or outside the Department.

- A. Complaints shall be accepted from any source, whether made in person, by mail, by computer or by telephone. Employees receiving complaints shall use the CSUF University Police Department Citizen Complaint Form.
  - 1. Any employee receiving information alleging misconduct or inadequate service shall not attempt to dissuade the person from making the complaint, even if the employee feels the complaint is of minor importance.
  - 2. A request for clarification or explanation of a particular procedure is not a complaint.

## B. Complaint Origin

1. If a complainant will not make a written complaint, a written summary will be completed by the Department member with whom the complaint was lodged.
2. Third party complaints of serious allegations shall be investigated.
3. Anonymous complaints will be investigated to the extent possible given the information provided. These complaints will normally be investigated for administrative purposes. [CALEA 52.1.1]
4. A parent or legal guardian can lodge a complaint on behalf of their juvenile dependent.
5. Complaints based on hearsay information of employee misconduct, shall be routed to the employee's immediate supervisor for determination if there exists a preponderance of evidence to warrant an investigation.

## C. Employees receiving complaints should refer the complainant directly to a supervisor who will accept the complaint.

1. If a supervisor is not readily available, any officer will take the complaint.
2. It is not advisable to request a citizen come back later or telephone when a supervisor will be available.
3. Employees receiving complaints will [CALEA 52.2.1a]:
  - a. Screen the complaint to make sure that Department personnel are involved.
  - b. Ascertain if there is validity to the complaint, as opposed to a lack of understanding of agency procedures. Sometimes a complaint may be resolved by a simple explanation of agency procedures.
  - c. If a complaint involves an alleged infraction on the part of a Department employee(s), a supervisor shall review the complaint and make every possible effort to resolve the allegation at intake, forwarding the complaint and his/her findings to the appropriate Command Staff person.
  - d. If the complaint cannot be resolved at this level, the supervisor will forward the complaint to the appropriate Command Staff person who will review it and forward it to the Chief for assignment of investigation.
  - e. In the event of a major violation the shift supervisor receiving the complaint shall record all pertinent information and undertake a preliminary investigation of the incident. He/she will take whatever action is appropriate and required given the severity of the situation (arrest, temporary relief of duty, etc.), and immediately notify the appropriate Command Staff person and the Chief of Police of the nature of the complaint and the action taken.

## IV. Investigation Responsibilities

- A. The Department does not have a designated Internal Affairs Investigator.

1. The primary responsibility for this function shall rest with the Administrative Captain. [CALEA 52.1.3]
  2. Complaints may be investigated by the Chief of Police, Captain(s), the Lieutenant, an Investigator, or an assigned Sergeant, or a supervisor. [CALEA 52.1.3]
    - a. Any major violation will be investigated by the Internal Affairs function. [CALEA 52.2.1b]
    - b. Infractions may be investigated by Sergeants on the Department. [CALEA 52.2.1a]
  3. Complaints received by line personnel should be forwarded through the duty supervisor to the Captain(s), for review. [CALEA 52.1.3, 52.2.1a,b]
  4. The Captain(s) will immediately notify the Chief of Police of the receipt of the complaint either by telephone, email or by bringing the complaint form to the Chief for review. Depending on the seriousness of the complaint, the investigation may be assigned either internally or externally for investigation. [CALEA 52.2.1a,b, 52.2.2]
  5. At the time the complaint is assigned for investigation it will be logged in the current Internal Affairs log. Internal and External complaints will be logged separately for administrative tracking purposes.
  6. Complaints received directly by the Chief may be assigned for investigation at the Chief's discretion. [CALEA 52.2.1a,b]
  7. At no time will an investigation be assigned to an individual who is either a party in the complaint or a primary witness.
  8. The individual assigned to perform an internal investigation has the authority to report directly to the Chief of Police on the findings of the investigation and will provide updates throughout the investigation. [CALEA 52.1.3]
- B. Notifying Parties of a Complaint**
1. The Complainant
    - a. The complainant will be given a copy of the completed complaint form at the time the complaint is filed. The procedures for investigating complaints are noted on the form. [CALEA 52.2.4a]
    - b. The assigned investigator will provide periodic status updates to the complainant by telephone in more involved investigations. [CALEA 52.2.4b]
    - c. At the conclusion of the investigation, the Chief of Police will provide the complainant with a written complaint disposition. [CALEA 52.2.4c]
  2. The Accused Department Member(s) [CALEA 52.2.5]:

- a. Shall be notified of the complaint as soon as practical and shall either be given a copy of the complaint or a written statement of the allegations.
- b. Shall be advised of their employee rights and responsibilities relative to the investigation.

C. Employee Rights During an Investigation

1. If the complaint against a Department member is both an allegation that the Department rules were violated, and an allegation of criminal conduct, the investigation will be bifurcated.
2. In a criminal investigation, the officer has a right not to answer questions that would incriminate him or her, and they are entitled to all the rights of any other suspect.
3. In an administrative investigation, the officer does not have a right to refuse to answer questions when the questions relate to good order and efficiency of the agency.
4. The Public Safety Officer Procedural Bill of Rights Act, Government Code Section 3300 (AB301) applies to all administrative investigations into officer misconduct.
5. The interview of any Department member shall be conducted at a reasonable hour, preferably when the member is on duty, unless the urgency of the investigation dictates otherwise. If such an interview occurs during off-duty hours of the employee being interviewed, the employee shall be compensated for his/her off-duty time.
6. The employee shall be permitted to take notes and to bring his/her own recording device and record any and all aspects of the interview.
7. Employees shall have the right to be represented by a representative of his/her choice, who may be present at all times during the interview. The representative shall not participate in the interview, except to counsel the employee. The employee may request a postponement of the initial interview to contact a representative of his/her own choice.
8. No officer of this Department shall be compelled to submit to a polygraph examination. Polygraph examinations and voice stress analysis shall be administered to employees only with their consent and upon approval of the Chief, and then only after its application to the complainant.  
[CALEA 52.2.6e]
9. There shall be no compelled financial disclosure with the following exceptions [CALEA 52.2.6d]:
  - a. Pursuant to lawful process.
  - b. Conflict of interest is indicated.

- c. Given a special assignment subject to bribes.
  10. Any disciplined employees have the right to appeal.
  11. Searches:
    - a. State-owned desks, lockers, storage space, rooms, offices, equipment, work areas and vehicles are the sole property of the State of California, subject to inspection deemed necessary by the Chief of Police or other authority.
    - b. No officer shall have his/her locker or other space for storage that may be assigned to him/her searched except:
      - 1) In his/her presence;
      - 2) With his/her consent;
      - 3) If a valid search warrant has been obtained; or
      - 4) He/she has been notified that a search will be conducted.
  12. An employee shall not be required (unless subject to a random test procedure) to submit to a medical or laboratory examination, to a field sobriety examination, to a blood, breath or urine test for the purposes of determining the presence of a narcotic, drug, or alcohol unless  
[CALEA 52.2.6a]:
    - a. The employee exhibits objective symptoms of being under the influence of alcohol, and/or narcotic or drug; or
    - b. There is a reasonable and articulated suspicion that the employee ingested or absorbed by the body in any other manner an alcoholic beverage, narcotic, or drug.
  13. Any telephone call made or received on a Department telephone is the business of the Chief of Police and not confidential. Due to the very nature of the complex problems that face law enforcement and the need for accuracy in reporting, those using police telephones shall reasonably expect monitoring and/or recording of incoming and outgoing calls.
  14. Photographs of all employees will be maintained in their Department personnel file and in a separate folder for the purposes of identifying an employee involved in a complaint; with the exception of a criminal prosecution, employees of this Department will never be compelled to participate in a line-up. [CALEA 52.2.6b,c]
- V. Investigation Procedures
  - A. All interviews concerning the investigation should be recorded and if pertinent to the investigation, transcribed.
  - B. The complainant and all witnesses will be interviewed. If the complainant or witnesses do not cooperate with the investigator for the purposes of being interviewed this will be noted in the investigative report.
  - C. It is the responsibility of the assigned investigator to thoroughly investigate the case and submit a completed investigation report as provided under these

procedures. All relevant information obtained by the investigator shall be entered in the investigation report.

- D. The investigation shall not be delayed or suspended because of any concurrent civil or criminal proceeding to which the complainant is a part, unless:
1. Complainant requests a delay, there is no reason to believe that the alleged conduct of the accused member is of a serious or continuing nature.
  2. Upon the explicit advice of the University attorney or under the direction of the Chief.
- E. The investigator assigned to investigate a complaint against an employee(s) shall conduct a thorough, accurate and objective investigation within thirty (30) days. If the investigation cannot, for good cause, be completed within this time period, the investigator may be granted an extension (upon showing of good cause) by the Chief. The extension shall not exceed seven (7) calendar days, although consecutive extensions may be permitted. All requests for extensions will be documented and maintained in the investigative file. [CALEA 52.2.3]
- F. The investigative report shall be organized into the following four sections:
1. **Complaint** - This section of the report shall consist of a summary of the complaint as made by the complainant. Each alleged act of misconduct, as set forth in the complaint, shall be itemized. Reference shall be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
  2. **Investigation** - This section shall consist of a chronological summary of the investigation. Included shall be pertinent facts obtained through interviews with the complainant, accused member(s), and all available witnesses. Summaries of written statements made by the above persons, description and analysis of physical evidence obtained, and all other information relevant to the investigation, shall be included.
  3. **Conclusions/Findings** - The results of the investigation of any allegation including the observations and conclusions of the investigator shall be placed in this section. This shall include one of the dispositions as noted below. Also the reason for the findings in connection with each allegation shall be set forth in this section. [CALEA 52.2.8]
  4. **Recommendations** - This section shall include recommendations for discipline or additional training if any deficiencies were noted in the course of the investigation. In investigations conducted by employees below the rank of lieutenant, the recommendation for discipline should be deferred to the Chief.
- G. Each allegation in the complaint will be classified with one of the following dispositions [CALEA 52.2.8]:

1. Unfounded – When the investigation indicates the alleged action did not occur.
  2. Exonerated – When the investigation indicates the act occurred but it was justified, lawful, and proper.
  3. Not Sustained – When the investigation discloses insufficient evidence to clearly disprove or prove the allegations.
  4. Sustained – When the investigation discloses that the allegation is supported by sufficient evidence to justify a reasonable conclusion of guilt. (by a preponderance of the evidence)
- H. Upon receipt of a completed investigation, the Chief of Police shall:
1. Order further investigation, if necessary.
  2. Determine if any violation of law, Department policy or rules and regulations has occurred. (The Chief is not bound by the findings in the investigation by a subordinate, but may make new and separate findings based on the investigation results).
  3. Make a decision for disciplinary action or other disposition, based on the findings and the employee’s record of service.
  4. Inform the accused in writing of the results of the investigation and disposition.
  5. Direct that the results and disposition concerning the investigation of any sustained complaint be preserved in the employee’s personnel file.
- I. Maintenance of Internal Affairs Records
1. Investigative reports and records of all complaints against the Department or its employees will be maintained in a locked file in the Chief’s office. These records shall remain confidential. [CALEA 52.1.2]
  2. Every sustained case which has resulted in a counseling form, letter of reprimand, suspension, loss of pay, demotion in rank, or termination shall require a written explanation of the disciplinary action taken along with a summary of the complaint to be placed in the employee’s personnel file. This shall be retained per the California State University Records/Information Retention and Disposition Schedule.
  3. If there are two or more employees involved in a citizen’s complaint, individual summaries shall be prepared for each employee regarding his/her involvement and the disposition, which will be placed in each employee’s personnel file. Each employee involved in a citizen’s complaint will receive a copy of the summary.

4. Once completed and filed, only the Chief, the Chief's Assistant or the Command Staff shall have access to an IA record, except where [CALEA 52.1.2]:
  - a. Access is required by law or court order; or
  - b. Information contained in the file is relevant to a subsequent investigation.
  - c. Per AB1421, summary information relating to some specific sustained internal affairs complaints may be released under the provisions of a Public Records Act request.
5. Per P.C. 832.5, all citizen complaints must be maintained by the Department for a period of at least five years. Internal complaints and other government records must be maintained for a period of at least two years. [CALEA 52.1.2]
6. The Department shall complete an annual summary of citizen (external) complaints, which shall include the number and types of complaints filed and dispositions [CALEA 52.1.5].

J. Arrests of Department Members

1. When a member of the Department is arrested by it's department or another jurisdiction, the Chief of Police shall be notified immediately. If the Chief is unavailable, the Command Staff person in the individual's chain of command or in his/her absence, the Watch Commander shall be notified.
2. The Watch Commander shall proceed to the place of confinement, if local, and if the seriousness of the charges warrants, advise the member that he/she is suspended immediately, (with pay) pending further investigation. If suspended, the employee shall be relieved of Department property in his/her immediate possession, and such property shall be delivered to the Chief. Steps will be immediately taken to obtain the Departmental weapon, badge and identification card of the involved employee, if it is not in his/her possession.
3. A preliminary investigation shall be conducted immediately and results communicated to the Chief.
4. If the cause for arrest was serious and justified, a Departmental investigation shall be initiated immediately, through the Chief.

REVIEWED BY: S.Willey/Chief R.Aguirre  
APPROVED:

A handwritten signature in black ink, appearing to read "Raymund J. Aguirre". The signature is written in a cursive style with a large initial 'R' and 'A'.

Raymund Aguirre  
Chief of Police