

Sachse Police Department

<i>Subject:</i> Internal investigations and disciplinary process		<i>Number:</i> 320.00	
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<i>Issuing authority:</i> Bryan Sylvester, Chief of Police		<i>Revision date:</i> 03/25/2019	
<i>References:</i> TPCA Best Practices Standard 2.04 Internal Investigations TPCA Best Practices Standard 2.05 Time limit on Internal Investigations TPCA Best Practices Standard 2.06 Complaints requiring an Investigation TPCA Best Practices Standard 2.07 Notification of the Agency Director TPCA Best Practices Standard 2.08 Appeal Procedure for Disciplinary Action TPCA Best Practices Standard 2.09 Records and security of complaints and Investigations TPCA Best Practices Standard 2.10 Notification to Complainant			

320.00 Overview

It is essential that public confidence be maintained in the ability of the Department to investigate and properly adjudicate complaints against its members. Additionally, the Department has the responsibility to discipline those whose conduct discredits the department or impairs its effective operation. The rights of the employee as well as those of the public must be preserved. Any investigation or hearing arising from a complaint must be conducted in an open and fair manner with the truth as its primary objective. The Department accepts complaints against its members, policy, or procedures and fully investigates all such complaints to the appropriate disposition.

320.01 COMPONENTS OF THE DISCIPLINARY SYSTEM

Training as a component of the Department's disciplinary system may be employed alone or in conjunction with one or more of the other components of the disciplinary system.

Professional Counseling as a component of the Department's disciplinary system may be employed alone or in conjunction with one or more of the other components of the disciplinary system.

Discipline options administered as a result of a sustained complaint include: Written Counseling, Written Reprimand, Suspension, Demotion (if applicable) or Termination of Employment.

320.02 PERSONNEL COMPLAINTS IN GENERAL

A. The Department accepts and investigates all complaints alleging an act or acts, which if proven true, would be a violation of Departmental regulations or City of Sachse policy, procedure, rules, or a violation of any applicable civil or criminal statute or lawful regulation.

B. All such complaints are documented in writing either by sworn statement, signed letter, and/or inter-office memo. No disciplinary action is taken against any employee except by a signed complaint in the form of a statement, signed letter, or report, except by subsection D. Complaints are always signed by a person with knowledge of the act in question. Persons with knowledge may be citizens, other City Employees or members of the Department who gain knowledge through investigation of the complaint.

C. Personnel complaints are not generally accepted more than ninety (90) days after the alleged incident except under the following conditions:

1. When the complainant can show good cause for not making the complaint sooner.

2. When the complaint involves an alleged criminal violation, the criminal statute of limitations will prevail. However, such limitations will not prevent investigation and potential disciplinary action deemed necessary to preserve the integrity of the Department.
3. When the complaint involves an alleged serious non-criminal act, as determined by the Chief of Police, and an investigation is required to preserve the integrity of the Department.

D. Formal investigations involving an anonymous complaint are initiated only upon specific direction of the Chief of Police. Complaints brought by citizens who do not wish to become involved to the extent of signing a letter or sworn statement are investigated the same as any other complaint. After a preliminary investigation has been completed and an alleged violation identified, the complaint may be signed by the supervisor or investigator who gains knowledge of the facts through investigation or, in some instances, by the Chief of Police.

E. An Administrative Inquiry may be initiated by the Chief of Police when information exists that indicates misconduct or negligence may have been exhibited, but either the specific misconduct or the employee(s) responsible have not or cannot be identified without further investigation.

- 1 Upon completion of the Inquiry, the assigned investigator will submit a report to the Chief of Police. Based on this report, the Chief of Police will either classify the inquiry as needing "No Further Action" or a complaint may be initiated for investigation.
- 2 Administrative Inquiries not resulting in a complaint will be retained in a separate file from other complaints.

E. Complaints relative to differences of opinion between a police officer and a citizen regarding guilt or innocence of the citizen are not investigated, but are properly disposed of within the judicial system. However, if there are indications that the arrest was malicious and/or illegal or there is an allegation of violation of some law or Departmental regulation on the part of the officer, the complaint is investigated.

F. Complaint investigations shall be completed within thirty (30) calendar days after an investigator is assigned to the case.

1. The investigator will report the status of the investigation to the Chief of Police or designee every seven (7) days until the investigation is completed.
2. If extenuating circumstances exist, the investigator may request an extension of the time limit in writing to the Chief of Police. The request must explain the reason(s) for the extension.
3. Only the Chief of Police or designee may grant an extension.

320.03 GENERAL AUTHORITY AND RESPONSIBILITY
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A. All members of the Department shall:

1. Fully cooperate with persons assigned to investigate complaint allegations.
2. Answer all questions completely and truthfully put forth by persons investigating complaint allegations. If an employee refuses to answer questions, is untruthful, or withholds information, the employee may be subject to disciplinary action up to and including termination.
3. Submit a memorandum (as requested) detailing their actions, knowledge and or any other pertinent information related to the incident being investigated.
4. Report known violations committed by other employees to a supervisor. Violations include disobedience to laws, directives, policies, procedures, and orders.

B. Supervisors and Command Rank Officers shall:

1. Initiate investigations when they become aware of infractions by a member of the department. They do not look to higher authority for initiation of such action.
2. Report all alleged or suspected violations via their chain of command to the Chief of Police via memorandum. Allegations of serious acts of misconduct or any alleged criminal violation will be immediately reported to the Chief of Police.
3. Conduct Complaint or Administrative Inquiry investigations when so directed by the Chief of Police.
4. Evaluate the seriousness of the alleged violation to determine whether or not the employee will be relieved of duty. Note: Only a Command Officer may relieve an employee from duty due to an allegation of misconduct.
5. A Sergeant and if designated, an Officer, shall be appointed by the Chief of Police to be responsible for the Internal Affairs function as a secondary assignment. In this role, they will report directly to the Chief of Police.
6. Review completed investigations and make recommendations regarding disposition and discipline if applicable. Recommendations regarding disposition and discipline will be submitted via memorandum and included within the complaint investigation case file.

C. Chief of Police shall:

1. Exercises staff control over all complaint investigations.
2. Maintain Internal Affairs files on each member of the Department.
 - a. Internal investigations records are maintained in the appropriate file until the file is purged per the retention schedule specified in this order.
 - b. Files shall be kept physically secure and accessible only by Command Staff level personnel.
3. Assign investigative responsibility for personnel complaint investigations.
4. Review all completed investigations.
5. Determine the final disposition of each complaint investigation. The Chief of Police reserves the right to suspend an investigation or final disposition for an indefinite period when deemed appropriate.
6. Administer appropriate disciplinary actions.
7. Cause the complainant to be notified in writing of the final disposition of the complaint. Notification of status may be made to the complainant during the investigation, if necessary.

320.04 EXTERNALLY ORIGINATED COMPLAINTS
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A. Citizens wishing to make a complaint against any member of the Department are referred to the employee's immediate supervisor. In the absence of the supervisor, complaints are referred to any available supervisor. Citizens may also file a complaint directly with an Internal Affairs investigator.

B. Upon receiving a complaint, the supervisor will do the following:

1. Interview the complainant, in person or by telephone, to obtain all pertinent information.
2. If the person making the complaint is intoxicated or otherwise impaired, the supervisor will document this fact but will still take the reported information.
3. Advise the complainant for a formal complaint to be taken the complaint must be made in writing and signed by the complainant (Texas Government Code 614.022). If the complainant desires to make a written statement, the

supervisor advises the complainant to appear in person. When the complainant appears, his or her statement is taken using a "Complaint on Police Employee" form and is sworn to in front of a Notary Public. The complainant may have a copy of the affidavit as verification that the complaint was received. If the complainant will not submit the complaint in writing, the information will still be documented as provided for in this order.

3. Complete a Personnel Complaint Control Sheet articulating the circumstances and specific alleged policy(s) violation.

4. Forward the Personnel Complaint Control Sheet, Complainant statement and other pertinent information regarding the complaint thru their chain of command to the office of the Chief of Police.

320.05 INTERNALLY ORIGINATED COMPLAINTS

A. Internal complaints may originate from any employee.

320.06 INVESTIGATION OF ALLEGED CRIMINAL VIOLATIONS

A. All incidents of alleged criminal conduct on the part of an employee will be investigated by the Criminal Investigations Unit or by an outside agency authorized by the Chief of Police.

B. The employee will be afforded all constitutional rights and legal guarantees normally provided to any citizen.

C. The Criminal Investigations Unit or assigned outside agency will determine if criminal charges are to be filed.

D. A separate investigation into rule violations shall be conducted by Internal Affairs personnel.

320.07 COMPLAINT INVESTIGATION PROCEDURES

A. Upon receipt of a complaint, the Chief of Police shall determine the appropriate course of action relative to the following options:

1. Designate the complaint as Not Valid. Not Valid complaints will be filed and retained separately from other complaint investigations.

2. Designate the complaint as an Administrative Inquiry and assign for investigation.

3. Designate the complaint as valid and assign for investigation.

B. The assigned investigator(s) shall:

1. Obtain an Internal Affairs Case Number.

2. Notify the affected employee(s) in writing as soon as appropriate. This notice shall be in the form of a memorandum entitled "Letter of Complaint" and will contain the complainant's name, a description of the allegation(s) and the potential specific policy violation(s). The notice will be signed and dated by the employee(s) and the assigned investigator. A copy will be provided to the employee(s).

3. Determine and issue an Order of Confidentiality if required.

4. Issue the Garrity Warning for all administrative investigations.

5. Conduct a thorough and objective investigation.

6. Submit a Final Report, inclusive of an investigative summary, all related reports, statements, video/audio media etc. to the Chief of Police, and make a recommendation to classify the complaint as:

a. **Unfounded:** The investigation determined that the act or acts complained of did not occur.

b. **Not Sustained** (inconclusive): There is not sufficient evidence either to prove or disprove the allegation.

c. **Sustained**: The allegation is supported by sufficient evidence.

d. **Exonerated** or proper conduct: The incident complained of did occur but was lawful and proper.

7. If recommending to classify the complaint as sustained, include a summary of the employee's discipline record with the final report.

320.08 DISPOSITION OF THE COMPLAINT INVESTIGATION

A. The Chief of Police reviews the completed investigation, makes the final case disposition and takes any action on collateral information in the final report.

B. If the allegation or incident is classified as unfounded, exonerated, or not sustained, the employee is notified in writing, through the employee's chain of command. If the employee has been relieved from duty, the employee is reinstated.

C. If the allegation is sustained or a violation not related to the initial complaint is discovered and sustained:

1. The Chief of Police forwards the completed investigation report to the employee's chain of command for recommendations regarding disciplinary action.

2. The employee's chain of command make recommendations regarding disciplinary action. These recommendations are then forwarded to the Chief of Police within seven (7) days.

a. A separate memorandum from each supervisor is necessary in cases of non-concurrence.

b. This procedure applies to both externally originated and internally originated complaints.

3. The employee is then informed of the disciplinary action to be taken. If the discipline to be administered involves a suspension, demotion or termination, a disciplinary conference will be held prior to the imposition of the proposed discipline in accordance with city policy.

4. The employee has the right to appeal discipline that involves suspension, demotion or termination to the City Manager in accordance with city policy.

320.09 EMPLOYEE'S RIGHTS DURING AN INTERNAL INVESTIGATION (Non-Criminal Investigation)

A. Employees shall be presumed innocent of all allegations until sufficient evidence exists to prove the allegation occurred.

B. Employees shall be treated fairly and respectfully. No employee shall be intentionally embarrassed, demeaned, or otherwise abused, under any circumstances.

C. Employees should be interviewed during their normal duty hours, and interviews should be held to reasonable lengths. If this is not possible, the employee will be given as much advance notice as possible. Special considerations should be made if an employee has already worked a duty shift immediately prior to the interview.

D. Employees have the right to read or hear the charge and to know the accuser's identity (if known) prior to being interviewed.

E. Employees may assume, unless advised otherwise, the complaint investigation of allegations is an administrative, not criminal, investigation. When an employee is questioned in reference to a complaint investigation, the rules under Garrity automatically apply, regardless of whether the employee has received a formal written Garrity statement

F. Employees have the right to audio record all proceedings in which they are present and/or obtain written transcripts of those proceedings from the Department if and when they are made. The employee will advise the investigator if they are recording the interview. Recordings will be subject to any active Order of Confidentiality. City owned body cameras are not authorized nor shall be utilized for this purpose.

G. As a matter of practice, employees will not be interviewed by more than two people at one time. However, based on the magnitude of the investigation, it may be necessary to involve more than two investigators in an interview.

H. Polygraph examinations will only be conducted in compliance with Texas Government Code 614.063.

I. No order shall be construed as to prohibit communications between an employee's spouse, legal counsel or any other communications recognized by law as privileged.

J. The enumeration of these certain rights shall not be construed to deny others retained by law.

K. Counsel's Presence during Interview

1. The employee is not entitled to have counsel present during an interview regarding an administrative investigation of improper conduct.
2. The employee is permitted to have counsel present during an interview regarding a criminal investigation.

L. Search of Equipment

1. Reasonable searches of departmental equipment (lockers, desks, squad cars, etc.) and facilities assigned to the exclusive use of an employee may be conducted by a supervisor if it is a routine search, for the maintenance of discipline, or for security purposes. A search conducted of these areas relative to a criminal investigation requires consent of the employee or a search warrant.
2. If a search is initiated for the purpose of securing evidence to be used in an administrative disciplinary action, the search would be reasonable. The search must be for the enforcement of departmental regulations and not the discovery of criminal violations.

320.10 SPECIAL EXAMINATIONS

A. Polygraph Examination

1. An employee may be ordered to submit to a polygraph examination by the Chief of Police.
2. Should the employee refuse the test, the complaint may be classified as sustained, provided additional evidence supports the sustained classification.
3. Should the employee refuse to take the test after being ordered by the Chief of Police, then the employee may be subject to disciplinary action up to and including termination of employment for refusal to obey an order (insubordination). Purposely doing anything that would affect the test would also be considered insubordination.

B. An employee under investigation may be required to submit to a medical or laboratory test only when such a test is narrowly related to a particular investigation.

C. An employee will not be required to submit financial disclosures during an Internal Affairs complaint investigation without prior approval of the Chief of Police.

320.11 CONFIDENTIALITY

- A. Any supervisor or Internal Affairs investigator may issue an Order of Confidentiality. The intent of this order is to ensure and preserve the integrity and confidentiality of administrative matters under investigation.
- B. When a Final Disposition Classification has been determined, all Orders of Confidentiality will automatically expire, unless directed by the Chief of Police.
- C. All complaint investigations are classified as "CONFIDENTIAL", and no portion of the investigation is reproduced without permission of the Chief of Police.
- D. Complaint investigations will not be released to unauthorized persons. If an outside agency investigates the complaint, the complaint records will only be released in accordance with applicable state or federal laws.
 - 1. Sustained complaints that fall under the reporting guidelines of Brady v. Maryland, 373 U.S. 83, 87 (1963) or the Michael Morton Act (Texas Code of Criminal Procedure Article 39.14) will be disclosed to the appropriate District Attorney's Office (Collin or Dallas).
 - 2. The Chief of Police will have the final determination if Brady/Morton applies and if the sustained complaint will be disclosed.
 - 3. When disclosed, the Internal Affairs sergeant will be responsible for providing all necessary documentation to the District Attorney's Office for review.
 - 4. The affected employee will be notified of the disclosure and the documentation provided.
- E. The Department must respond to any court subpoena for Internal Affairs records; however, it is the practice of the Department to contest all such subpoenas. If the court then orders the Department to produce the records, the order is honored.

320.12 SPECIAL PROCEDURES

- A. The Chief of Police may circumvent all formal disciplinary procedures to render an immediate decision when necessary to preserve the integrity of the Department.

320.13 INTERNAL INVESTIGATIONS RECORDS RETENTION

- A. Internal Affairs records shall be inspected at least every two years. Complaint Investigations and Administrative Inquiries that are beyond the retention schedule below shall be purged and shredded/destroyed as appropriate.
 - 1. **Permanent:** Records of investigation of police shooting incidents that result in death or injury to any person, including a police officer.
 - 2. **15 Years:** Records of investigations resulting in a sustained complaint and issuance of a written reprimand or suspension or demotion.
 - 3. **5 Years:** Records of investigations resulting in a sustained complaint and issuance of written counseling.
 - 4. **3 Years:** Records of investigations resulting in the complaint being classified as Unfounded, Exonerated or Not-Sustained.
 - 5. **2 Years:** Administrative Inquiries not resulting in a complaint.