

## Personnel Complaints

### 1020.1 PURPOSE AND SCOPE

The purpose of this procedure is to provide guidelines for reporting, investigation and disposition of complaints regarding the conduct of members and employees of this department.

This policy describes the safeguards that apply when an employee is under investigation concerning a matter that may lead to economic sanctions or dismissal from employment, and when that employee will be interviewed regarding the matter. The policy is meant to ensure that any disciplinary action taken against an employee only occurs with just cause.

This policy does not apply when a supervisor questions an employee in the normal course of an informal verbal admonishment or when the supervisor has other routine or unplanned contact with an employee. Nor does this policy apply to an investigation concerned solely with alleged criminal activities.

#### 1020.1.1 DEFINITIONS

**Disciplinary action** - An action taken against an employee by the University of Oregon Police Department to sanction the employee, including dismissal, demotion, suspension without pay, reduction in salary, written reprimand and transfer (ORS 236.350 (1)).

**Employee** - Any paid member of the University of Oregon Police Department.

**Just cause** - A cause reasonably related to the employee's ability to perform required work. The term includes a willful violation of reasonable work rules, regulations or written policies (ORS 236.350 (2)).

**Personnel complaint** - Any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state or local law.

**Service complaint** - Any complaint about employee conduct which, even if true, would not qualify as a personnel complaint

### 1020.2 AVAILABILITY OF COMPLAINT FORMS AND ACCEPTANCE OF COMPLAINTS

#### 1020.2.1 AVAILABILITY OF COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the Department's public lobby. Forms may also be available at other campus sites. Electronic forms are available on line at the Department's web site.

#### 1020.2.2 SOURCE OF COMPLAINTS

- (a) A department employee who becomes aware of alleged misconduct shall immediately notify a supervisor.

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- (b) A supervisor receiving a complaint from any source alleging misconduct of an employee should immediately document that complaint, submit it to Sergeant of Professional Standards and Training, and notify his/her immediate supervisor.
- (c) Anonymous complaints and third-party complaints should be accepted and forwarded to the Sergeant of Professional Standards and Training for investigation (to the extent that sufficient information is provided).

#### **1020.2.3 ACCEPTANCE OF COMPLAINTS**

A complaint may be filed in person, in writing, or by telephoning the Department. Although it is not required, every effort should be made to have the complainant appear in person. The following should be considered before taking a complaint:

- (a) Complaints shall be documented and forwarded to the Sergeant of Professional Standards and Training for classification, evaluation and assignment.
- (b) Supervisors are encouraged to try to resolve Service Complaints at the time of intake. Document the contact, explain whether the complainant is satisfied with the explanation, and forward to the Sergeant of Professional Standards and Training for evaluation and filing.
- (c) When the complainant is intoxicated or impaired to the point where his/her ability to recall and communicate facts, or understand questions, is compromised; employees shall obtain identifying information, provide the complainant with a personnel complaint form and forward documentation of the contact to the Sergeant for Professional Standards and Training.

#### **1020.3 SUPERVISOR RESPONSIBILITY**

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the office of Professional Standards and Training and the investigation of Service Complaints will rest with the employee's immediate supervisor. The Chief of Police or authorized designee may, however, direct that another supervisor investigate. Supervisors shall be responsible for the following:

- (a) A supervisor receiving a formal complaint involving allegations of a potentially serious nature shall ensure that the Chain of Command is notified as soon as practicable via email or phone message. In cases of extreme severity of complaint, the Executive Coordinator will determine if other Command officers need to be immediately notified by phone.
- (b) A supervisor receiving or initiating any complaint shall ensure that written documentation has been completed as fully as possible, and directed to the Sergeant of Professional Standards and Training. During the intake of any complaint, the supervisor should make every reasonable effort to obtain names, addresses and telephone numbers of additional witnesses.

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1. Photographs of any injuries alleged by the complainant, as well as visible areas of non-injury, should be taken once immediate medical attention has been provided.
  - (c) A supervisor dealing with an accused employee shall ensure that the procedural rights of the employee are followed.
  - (d) When the nature of a personnel complaint relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination, the supervisor receiving the complaint shall promptly contact the Sergeant - Professional Standards and Training for direction regarding the investigation and/or addressing the complaint, to include contacting the Office of Affirmative Action and Equal Employment Opportunity. If the Sergeant - Professional Standards and Training is unavailable, the matter will be forwarded to the Assistant Chief or Chief, in that order.

### **1020.4 ASSIGNMENT TO ADMINISTRATIVE LEAVE**

When a complaint of misconduct is of a serious nature or when the circumstances reasonably dictate an undue risk for the Department, the employee, other employees or the public, the accused employee may be reassigned or placed on administrative leave.

#### **1020.4.1 ADMINISTRATIVE LEAVE**

An employee placed on administrative leave may be subject to the following guidelines:

- (a) The employee shall continue to receive regular pay and benefits, pending the imposition of any discipline.
- (b) An employee may be required by a supervisor to relinquish any badge, department identification, assigned weapon(s) and any other department equipment.
- (c) An employee may be ordered to refrain from taking any action as a department employee or in an official capacity. The employee shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (d) An employee may be temporarily reassigned to a different shift during the investigation. The employee may be required to remain available for contact at all times during such shift and report as ordered.
- (e) Reinstated employees shall have all badges, identification cards and equipment reissued.

### **1020.5 ALLEGATIONS OF CRIMINAL CONDUCT**

When an employee of this department is accused of potential criminal conduct, a criminal investigation will be initiated apart from the administrative investigation(s). Any administrative investigation(s) will be separate from, but may parallel a criminal investigation.

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The criminal investigation will have priority over the administrative investigation(s). It is common to delay an administrative investigation so as not to interfere with the criminal investigation. However, certain administrative actions may be taken while the administrative investigation is delayed, in order to protect the involved employee, Department, University or University community.

The Chief of Police shall be notified as soon as practical when an employee is accused of criminal conduct regardless of the form of the complaint.

In the event of serious criminal allegations, the Chief of Police may request a criminal investigation by an outside law enforcement agency.

An employee accused of criminal conduct shall retain all of the rights and privileges afforded a non-sworn. The employee may not be administratively ordered to provide any information to a criminal detective.

### 1020.5.1 NOTIFICATIONS

The Vice President Finance and Administration and the UO Office of the General Counsel will be notified as soon as practical when an allegation of criminal conduct is lodged against a UOPD employee.

### **1020.6 ADMINISTRATIVE INVESTIGATION OF COMPLAINT**

Except as necessary to gain a general overview and sufficient facts of an incident to assess the necessity of an inquiry, or in order to obtain pertinent public safety information, an officer shall not be required to answer questions until he/she has been told of the facts and the nature of the investigation in a manner that is reasonably sufficient to inform the officer of the circumstances surrounding the allegations.

Whether conducted by a supervisor or an assigned member of the Professional Standards Unit, the following procedures and those set forth in ORS 236.360 shall be followed with regard to the accused employee(s):

- (a) Unless the seriousness of an investigation requires otherwise, interviews of accused employees shall be conducted when the employee is on-duty or during the employee's normal waking hours. If the interview is conducted while the employee is off-duty, the employee shall be appropriately compensated (ORS 236.360(2)(a)).
- (b) No more than two interviewers at a time may ask questions of an accused employee (ORS 236.360(2)(c)).
- (c) Interviews may not last an unreasonable amount of time, taking into consideration the gravity and complexity of the matter under investigation.
- (d) The employee's physical needs shall be reasonably accommodated (ORS 236.360(2)(f)).
- (e) The interviewers shall inform the employee of their authority to compel a statement and of the identity of the investigators and all persons present during the interview (ORS 236.360 (2)(d)).

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- (f) No employee shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. An employee being interviewed may not be threatened with punitive action. However, during a compelled interview solely for non-criminal purposes, an employee who refuses to respond to questions or refuses to be interviewed must be informed that refusal may lead to disciplinary action (ORS 236.360 (2)(h)). Nothing administratively ordered may be provided to a criminal investigator.
- (g) When practicable, the interviewer should record all interviews of employees and witnesses. An employee may record his/her own interview. If the employee has been previously interviewed, a copy of that recorded interview, written statement or transcript (if prepared) shall be provided to the employee prior to any subsequent interview (ORS 236.360 (2)(h)).
- (h) If the allegations involve potential criminal conduct, the employee shall be advised of his/her constitutional rights. This admonishment shall be given administratively even if the employee was advised of these rights during any separate criminal investigation. Specifically, the employee must be informed of the right to consult with criminal defense counsel with respect to the criminal charge (ORS 236.360 (2)(j)).
- (i) All employees subjected to interviews that could result in punitive action may have a representative of the employee's choosing present at the interview (ORS 236.360 (2)(b)). However, in order to maintain the integrity of each individual employee's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) In a disciplinary or administrative investigation, the employee's chosen representative cannot be required to disclose, or be subject to disciplinary action for refusing to disclose, statements made by the employee to the representative for purposes of the representation (ORS 236.360 (2)(k)).
- (k) All employees shall provide complete and truthful responses to questions posed during interviews.
- (l) No employee may be compelled to submit to a polygraph examination nor shall any refusal to submit to such examination be mentioned in any investigation.

#### 1020.6.1 ADMINISTRATIVE SEARCHES

Any employee may be compelled to disclose personal financial information pursuant to proper legal process, if such information tends to indicate a conflict of interest with official duties or if the employee is assigned to, or being considered for, a special assignment with a potential for bribes.

Employees shall have no expectation of privacy in or when using offices, desks, lockers, vehicles, telephones, computers, radios or other communications provided by the Department.

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Assigned lockers, offices, desks, vehicles and storage spaces are the property of the employer and may be administratively searched by a supervisor for work-related purposes (e.g. obtaining a needed report or radio).

All other non-assigned areas (shared desks, common office space, shared vehicles) may be administratively searched by a supervisor for non-investigative purposes.

An investigative search of such areas shall only be conducted with the approval of the Chief of Police or authorized designee upon a reasonable suspicion that official misconduct is involved.

### 1020.6.2 STEPS PRIOR TO DISCIPLINARY ACTION

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. The employee will be notified of the additional allegations.

Disciplinary action may not be taken against any employee without just cause (ORS 236.360 (4)). The Chief of Police shall ensure the following before any disciplinary action against an employee is taken:

- (a) Notification is made to the employee in writing of the charges against the employee and the proposed disciplinary action (ORS 236.360 (5)(a)).
- (b) The employee is given an opportunity to respond to the charges at an informal hearing, which may be recorded, that is attended by the person or persons having authority to impose the proposed disciplinary action (ORS 236.360 (5)(b)).

### 1020.6.3 REOPENING AN INVESTIGATION

An investigation may be reopened if significant new evidence is discovered that is likely to affect the outcome of the investigation, provided the evidence resulted from the employee's pre-disciplinary response and could not have been discovered without resorting to extraordinary measures (ORS 236.360 (7)).

### 1020.6.4 INAPPLICABILITY OF CERTAIN SAFEGUARDS

The safeguards of an administrative investigation listed in Policy Manual § 1020.6 do not apply in the following instances (ORS 236.370):

- (a) Investigations related to acts or omissions made during a probationary period.
- (b) Where the terms of a collective bargaining agreement provide for the safeguards.
- (c) Where there are conflicting county civil service system rules.
- (d) Where there exists a county or municipal civil service system that provides certain employees with disciplinary action protections at least equivalent to those provided in this policy.
- (e) Where the investigation is of the:
  1. Chief executive officer of a law enforcement unit, as defined in ORS 181.610.

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2. Supervisory employees, as defined under ORS 243.650, where a collective bargaining agreement is in effect.
  - (f) Where the employee is represented by a collective bargaining unit if the collective bargaining agreement provides for procedures and safeguards of the sort provided for in ORS 236.350 to 236.370.

### **1020.7 DISPOSITION OF PERSONNEL COMPLAINTS**

Each allegation shall be adjudicated with one of the following:

**Unfounded** - When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel. Complaints that are determined to be frivolous will fall within the adjudication of unfounded.

**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 exonerate the employee.

**Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

**Administratively Closed** - The investigation was closed prior to reaching an informed conclusion (e.g., complainant did not provide information needed, or refused to cooperate with the investigation). The investigation may be reactivated upon discovery of new, substantive information or evidence.

**Policy issue** - When everything in the complaint is determined to be accurate, including the officer's actions, but the issue appears to require a modification of policy the adjudication for the officer should be exonerated. The need for potential policy modification shall be immediately directed to the Chief of Police for action.

### **1020.8 COMPLETION OF INVESTIGATIONS**

The Office of Professional Standards and Training shall ensure that investigations are completed and employees are provided notification of intended discipline no later than 6 months from the date of the first interview. The Chief of Police, or designee, may extend the investigation to a maximum of 18 months from the date of the first interview, provided that, before the extended period begins, the employer gives written notice explaining the reason for the extension to the employee and the employee's chosen representative and union representative, if any (ORS 236.360 (6)(a)).

The above time limits do not apply when (ORS 236.360 (6)(b)):

- (a) The investigation involves an officer who is incapacitated or unavailable.
- (b) The investigation involves an allegation of workers' compensation or disability fraud by the officer.

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- (c) The officer, in writing, waives the limit.
- (d) The investigation requires a reasonable extension of time for coordination with one or more other jurisdictions.
- (e) The investigation involves more than one officer and requires a reasonable extension of time.
- (f) The alleged misconduct is also the subject of a criminal investigation or criminal prosecution. Time does not run for the period during which the criminal investigation or criminal prosecution is pending.
- (g) The investigation involves a matter in civil litigation in which the officer is a named defendant or the officer's actions are alleged to be a basis for liability. Time does not run for the period during which the civil action is pending.
- (h) The investigation is the result of a complaint by a person charged with a crime. Time does not run for the period during which the criminal matter is pending.

Upon completion of an investigation, the report should be forwarded to the involved employee's supervisor.

- (a) The supervisor will prepare a memo to the Chief recommending adjudication of each allegation. This memo will contain a sufficient review of the facts and analysis to support the recommendation.
- (b) The investigative file and supervisor's adjudication recommendation will be forwarded through the supervisor's Chain of Command to the Chief.
  - 1. Each command officer in the chain will review the supervisor's recommendation for adjudication. If necessary or appropriate, they will prepare their own recommended adjudication of each allegation, and provide additional analysis supporting their recommendation.

Once received, the Chief of Police will formally adjudicate the allegations and prepare documentation of the decisions for the investigative file. The Chief, or designee, will notify the employee and complaining party, in writing, of the adjudication decision.

Any complaining party who is not satisfied with the findings of the Department may contact the Chief of Police to discuss the matter further.

Disciplinary action taken as a result of the investigation will be handled separately from the investigation and adjudication processes pursuant to applicable Department and University policy, and collective bargaining agreements.

### 1020.8.1 CONFIDENTIALITY OF PERSONNEL FILES

All investigations of personnel complaints shall be considered confidential peace officer personnel files, and not subject to public disclosure (ORS 192.501). The contents of such files shall not be



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revealed to other than the involved employee (redacted version) or authorized personnel, except pursuant to lawful process.

In the event that an accused employee (or the representative of such employee) knowingly makes false representations regarding any internal investigation, and such false representations are communicated to any media source, the Department may disclose sufficient information from the investigation to refute such false representations.

Disciplinary action resulting from sustained complaints shall be maintained in the employee's personnel file. Complaints, and any investigative reports shall be maintained by the Professional Standards Unit apart from the employee's personnel file.

### 1020.8.2 ANNUAL REVIEW OF PERSONNEL COMPLAINTS

During January of each year, the Captain of Administration or his/her designee shall provide to the Chief of Police an annual report of personnel complaints from the prior calendar year. The report may include complaint trends, training needs and recommended policy changes. Specific detail, including items such as officer names, case numbers and location of occurrence, is not needed for this purpose and therefore will not be part of this process. This document shall be provided to the Associate Vice President for Safety and Risk Services.