

**TEXARKANA, TEXAS POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> February 1, 2008		<i>Amended Date</i>		<i>Directive</i> 2.04.1	
<i>Subject</i> Internal Investigations					
<i>Reference</i>					
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<i>Pages</i> 7					

This Operations Directive is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.

SECTION 1 PURPOSE

The purpose of this Directive is to establish professional standards and procedures for the administrative investigation process. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public's confidence in the agency is determined by the quality of the administrative investigative function in responding to allegations of employee misconduct and/or concerns about the agency's policies and procedures.

SECTION 2 POLICY

It is the policy of the Texarkana, Texas Police Department to promptly and thoroughly investigate all complaints against employees when said complaints are in writing and signed by the complainant. It is the policy of the Texarkana, Texas Police Department to promptly and thoroughly investigate every complaint alleging criminal conduct.

SECTION 3 PROCEDURES

A. RECEIVING, DOCUMENTING, AND ROUTING OF COMPLAINTS

1. An on-duty supervisor should be immediately notified of any complaint against an employee of the department.
2. The supervisor shall immediately obtain all information related to the person's complaint. The supervisor shall advise the complainant that, in accordance with the Texas Government Code 614.022, all complaints against peace officers must be in writing and must be signed by the complainant before the complaint will be investigated.
3. All complaints alleging criminal conduct will be investigated.
4. Formal Complaints are those complaints which involve an allegation of criminal conduct, any serious departure from department policy, or complaints that could reasonably result in formal disciplinary action according to Texas Local Government Code, Chapter 143, Subsection D, Disciplinary Actions. All Formal Complaints require a Complaint and Inquiry Record.

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5. Upon receipt of a Formal Complaint, the supervisor shall send the Complaint and Inquiry Record and the complainant's written statement, if one exists, to the Office of Profession Responsibility (OPR) and the employee's Division Commander by the end of the supervisor's tour of duty. The OPR shall notify the Chief of Police within 24 hours of receipt of the complaint and shall then notify the employee that they are the subject of a formal complaint. If the complainant provided a written statement, the OPR shall provide a copy of the written statement to the employee within a reasonable period of time.
6. Formal complaints will be investigated by the Office of Professional Responsibility or a supervisor designated by the Chief of Police. The OPR shall forward the completed investigation to the Chief of Police for review.
7. Informal complaints are those complaints which do not involve allegations of criminal conduct, do not involve a serious departure from department policy, or are not reasonably likely to result in formal disciplinary action according to Texas Local Government Code, Chapter 143, Subsection D, Disciplinary Actions. Informal complaints do not require a Complaint and Inquiry Record. A supervisor may complete a Complaint and Inquiry Record or if the matter can be dealt with by completing an Employee Counseling Record then the Employee Counseling Record may serve as the record of the complaint.
8. Informal complaints will be handled within the employee's division, and will be investigated by the affected employee's first line supervisor or the Division Commander's designee. Upon conclusion of the investigation, the Complaint form or the Employee Counseling Record shall be forwarded to the Office of Professional Responsibility along with all other related paperwork to be filed in the Office of Professional Responsibility database.
9. The supervisor who investigates the complaint shall notify the affected employee of the final findings and disposition of the complaint.

B. INVESTIGATOR'S FINAL REPORT

When conducting an investigation into any complaint, the assigned investigator shall make every attempt to interview the complainant, the employee under investigation, witnesses, and any other person whose statement could assist in the just resolution of the complaint. Informal complaints, which can be documented on an Employee Counseling Record, may not require an investigator's report. If an investigative report is necessary to document all of the information surrounding the complaint, the investigator's final report shall be in the form of a memorandum and should include the following information:

COMPLAINT – This is a narrative to identify the complainant, their personal information, and the nature of the allegation(s), to include date, time, location, employee and employee's duty status at the time of the alleged incident.

WITNESSES – A list containing the name, home address, work address and telephone numbers of all witnesses to the alleged incident.

INJURIES - A narrative describing the injuries or alleged injuries of all persons involved in the alleged incident.

DAMAGES – A narrative describing the loss/damage or alleged loss/damage.

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INVESTIGATION - A thorough and comprehensive documentation in narrative form of the investigation including, but not limited to date, time and content of interviews, testing and examination results, surveillance results, search results, etc.

CONCLUSION – A closing summary of the facts and evidence found during the investigation and a finding regarding each allegation.

C. CONCURRENT INVESTIGATIONS

1. The Chief of Police has the authority to order a criminal investigation into any allegation of wrongdoing instead of - or in addition to - an administrative investigation.
2. Certain incidents will require, in addition to the administrative investigation, an investigation by other units of the Department or other law enforcement agencies. These specialized investigative units include:
 - a. Traffic Unit – Whenever possible, the Traffic Unit will investigate motor vehicle collisions occurring in the City of Texarkana and involving agency vehicles. If a member of the Traffic Unit is not able to respond, a supervisor or an officer designated by the supervisor shall investigate and make a written report of the accident. Accidents will be investigated when the accident meets ANY of the following criteria:
 - 1) If the accident is reportable according to the CRB-3 Report Instruction Manual, or
 - 2) If another person, another person’s property, or another vehicle is involved in the accident , or
 - 3) If there is a complaint of pain/injury by any person involved in the accident.Any criminal charges will be filed by the Traffic Unit.
 - b. Investigative Services - In general, Investigative Services will conduct a criminal investigation into any incident involving an employee other than traffic-related incidents, which occur in the City of Texarkana and results in the death or serious bodily injury of any person and there is an allegation of misconduct.
3. The Chief of Police may ask that a state or federal law enforcement agency investigate a complaint if criminal conduct is alleged.
4. Due to the differing purposes of the administrative investigation and the criminal investigation, administrative investigators will have access to all evidence including statements obtained in the criminal investigation, but criminal investigators will not have access to any evidence obtained in the administrative investigation.
5. The imposition of discipline by the agency, in whatever form, shall in no way preclude a further sanction imposed against an employee in subsequent criminal or civil proceedings. Any sanctions imposed in a criminal or civil proceeding against an employee of the Department will not preclude the imposition of administrative sanctions.

E. FINDINGS

1. The findings of an administrative investigation should be as follows:

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- a. Sustained: The evidence supports the allegation of misconduct.
 - b. Not Sustained: There is insufficient evidence to either prove or disprove the allegation of misconduct.
 - c. Unfounded: The evidence indicates that the conduct did not occur.
 - d. Exonerated: The evidence indicates that the conduct occurred, but the conduct alleged is not improper.
 - e. Misconduct Not Based on Complaint – Sustained: The evidence supports a conclusion of misconduct, which was not alleged in the complaint.
 - f. Training Failure: The evidence supports the finding of improper action, which resulted from a lack of training or a flawed training practice.
 - g. Policy Failure: The evidence supports misconduct or improper action but the Department does not have a policy on the matter or the policy is faulty.
2. The Chief of Police reserves the right to make the final disposition of all complaints.

F. EMPLOYEE RIGHTS DURING ADMINISTRATIVE INVESTIGATIONS

1. In criminal allegations, the Chief of Police will determine when the employee is to be notified of the complaint.
2. If the complainant alleges an issue of racial profiling as described in the Texas Code of Criminal Procedures, Article 2.132 (b)(3), the employee is entitled to a copy of any video or audio recording of the occurrence on which the complaint is based. The Office of Professional Responsibility shall ensure the employee receives a copy of the video or audio recording.
3. Any interview of an employee during an administrative investigation should be held at a reasonable time in relation to the employee's work schedule, unless the circumstances of the situation require expediency or delay.
4. An employee who is the subject of a formal complaint should be notified of any administrative interview within a reasonable period of time prior to the date and time the interview is to be held.
5. During an administrative interview, an employee who is the subject of a complaint may be accompanied by a personal representative. The personal representative may only observe during the interview process and shall not interfere with the investigation or any interview.
6. Prior to an administrative interview, the OPR investigator or the investigating supervisor shall orally and in writing advise the employee of the "Garrity Warning", which states that any admission by an employee during an administrative investigation interview shall not be used against the employee during a subsequent criminal investigation or criminal proceeding.
7. Neither the OPR investigator nor any supervisor investigating a complaint shall promise or offer reward to an employee as an inducement to answer any question.

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8. An employee who is the subject of an administrative investigation may make an audio, video or written recording of any interview in which he/she is being interviewed.

G. RESPONSIBILITIES AND DUTIES

All Department employees shall:

1. Not disclose or discuss details of an administrative investigation with anyone, except the Office of Professional Responsibility investigator(s) or supervisor assigned to conduct the investigation, the employee's personal representative, the employee's chain of command, or other person(s) that the Chief of Police may specifically designate.
2. Make themselves available for interviews related to administrative investigations. Employees must cooperate by completely, thoroughly and truthfully answering all questions posed to him or her at every stage of the administrative investigation and review process. Failure or refusal to answer any question completely, thoroughly and truthfully, or failure to comply with lawful orders to submit to any tests, be photographed or participate in a line-up, or provide any documentation as directed by the Chief of Police or his designee, will constitute grounds for disciplinary action, which may include dismissal from the Department in accordance with the Local Government Code 143.051 and/or City of Texarkana, Texas Personnel Policies.

H. SPECIAL EXAMINATIONS

1. An employee who is the subject of an administrative investigation may, at his/her expense, request a drug/alcohol screen either by blood analysis or urine analysis, a psychological examination, a polygraph examination or a medical examination if it is believed that such analysis or examination would be beneficial to his/her defense.
2. A supervisor shall require an employee to submit to a drug/alcohol screen, by either blood analysis or urine analysis, when a level of inebriation or drug usage is suspected as a factor directly related to the employee's duty performance or the operation of a city vehicle. Supervisors shall refer to the City of Texarkana, Texas Personnel Policies, Chapter VI – Employee Conduct, Section 6.5 Drug and Alcohol Use Policy when requiring a drug or alcohol screen.
3. The Chief of Police may order an employee to submit to a medical fitness or mental fitness for duty examination. The Local Government Code, Section 143.081 Determination of Physical and Mental Fitness will govern the exam for Civil Service employees.
4. An employee can be required to participate in physical identification line-up during an administrative investigation. An employee can also be required to be photographed.
5. The Chief of Police may order an employee to submit to a polygraph examination in accordance with the Texas Government Code, Chapter 614.063, Polygraph Examinations. The Chief of Police may order non-Civil Service employees to submit to a polygraph examination.
6. Searches and inspections may be conducted for drugs, alcohol, contraband, and city property on city property or the employee's person if there is reason to believe that work-related misconduct will be found as a result of the search or inspection. Supervisors shall refer to the City of Texarkana, Texas Personnel Policies, Chapter VII – Work Environment, Section 7.06 Searches.

I. RELIEVE OR SUSPEND FROM DUTY WITH PAY

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1. As an emergency corrective measure, a supervisor may relieve a subordinate from duty with pay:
 - a. If the supervisor believes that the employee's continued presence poses a danger to themselves or others; or if the supervisor believes that the employee's presence will interfere with the effective operation of the Department.
 - b. The supervisor who relieved the employee from duty shall immediately notify the appropriate Division Commander and prepare written documentation to the Chief of Police before the supervisor's tour of duty ends.

J. EARLY WARNING SYSTEM

1. The Early Warning System is designed to assist supervisory and management personnel in monitoring employee performance. The intent of the program is to identify employees who might benefit from supervisory intervention. It may be determined, through review, that no further action is needed. The Early Warning System shall be used, based upon a review of individual administrative incident history, as a means to identify employees who may be in need of intervention or training. Intervention measures, when warranted, may include the following:
 - a. Referral to peer counseling.
 - b. Referral to an agency authorized mental health professional or other mental health provider.
 - c. Requiring the employee to participate in agency authorized training targeting personal or professional problems that the employee may be facing.
 - d. The re-assignment or transfer of the employee.
2. The OPR will maintain an Early Warning System database containing data related to administrative investigations, citizen complaints, use of force, fleet accidents, vehicle pursuits, employee drug tests, employee counseling, employee written reprimands, and employee disciplinary actions. The OPR Commander will complete quarterly reports summarizing these incidents and provide an analysis of the information to highlight agency trends. This report shall be submitted to the Chief of Police and others as directed by the Chief of Police.
3. When an employee has had a disproportionate number of entries into the Early Warning System database, the Early Warning System will generate an alert. The OPR shall provide notice of the alert to the Chief of Police and the employee's Division Commander. The Division Commander shall notify the employee's first-line supervisor. The supervisor shall then:
 - a. Review the administrative incident history;
 - b. Confer with the employee's second-line supervisor to determine the most appropriate level of intervention, if any, necessary to assist the employee in improving their performance;
 - c. Upon approval of the Division Commander, the recommended intervention measures shall be implemented and a memorandum outlining these measures shall be forwarded to the OPR and the Chief of Police for inclusion in the Department's confidential administrative file for the employee; and

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- d. Monitor and report monthly on the progress of the employee in complying with the recommended intervention action plan until the Division Commander is satisfied that the employee's performance deficiencies have been corrected. A copy of the report will be sent to the OPR and the Chief of Police for inclusion in the Department's confidential administrative file for the employee.

K. RESPONSIBILITY

1. All members of the Department shall know and comply with all aspects of this directive.
2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.