

# **Davis Police Department**

## **PERSONNEL INVESTIGATIONS**

This guideline was prepared by the Office of the Police Chief to assist supervisors/managers in conducting personnel investigations pursuant to Davis Police Department Policy & Procedure 1.07-A, Personnel Investigations. Although the guidelines contain common practices, there are differences in each personnel investigation which makes it difficult to have a strict protocol that shall be used in every case. Therefore, this serves only as a guide in conducting personnel investigations.

Many members question the need to formally investigate allegations of misconduct or the need to conduct complex investigations. The answers to those questions are fairly simple; the appropriate response to complaints of alleged police misconduct is essential to preserving the integrity of, and public confidence in, the Davis Police Department. Furthermore, Penal Code § 832.5 requires that each California law enforcement agency have a policy for accepting complaints and that the policy is made available to the public.

How complaints are categorized and assigned for investigation is discussed in Policy & Procedure 1.07-A. For the purposes of these guidelines, it should be assumed the matter has been assigned for a complete investigation. With that being said, it is imperative an assigned investigator is intimately familiar with Policy & Procedure 1.07-A, and follows its provisions when conducting any investigation.

The investigating supervisor/manager must always be unbiased and objective. Having an open mind, a desire to seek the truth, the ability to ask the “tough” questions and the perseverance to answer all of the questions regarding what happened in the incident being investigated are some attributes you must possess to successfully investigate an incident. An incomplete investigation is not only a disservice to the community and the members of the Davis Police Department, but it can disassociate a member who will no longer have any trust or faith in the Department or the “system.”

Your opinion of the lack of seriousness of the investigation will often be completely opposite to the member’s concern. Some members will dwell upon a complaint and investigation to the point that it will affect their continuing performance. In some cases a lingering investigation can affect a member’s health and their trust in the Department. The Department has set goals for the timeliness of completing the investigation. It is incumbent upon you to meet those time demands without sacrificing or compromising your investigation.

Many supervisors/managers are unfamiliar with the entire investigative process and they can jeopardize the Department’s ability to resolve an investigation through a careless approach. If you have any questions about any investigative issue that is not addressed in these guidelines, contact the Office of the Police Chief for help.

Remember, the burden of proof to sustain an allegation is - the investigation disclosed sufficient evidence to prove the truth of allegation in the complaint by the preponderance of evidence. In the determining whether the burden of proof is met, the greater weight of the evidence is required for the Office of the Police Chief to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

## **ORGANIZING THE INVESTIGATION**

Once you have an initial understanding of the complaint, it is time to organize your investigation. By outlining some brief steps, you will have an investigative path to follow.

Some of the steps are:

- Review the complaint and any recordings or documents that were received along with the submission of the complaint. This includes any memoranda, audio, or video that was taken by a supervisor receiving the complaint.
- What are the specific issues and allegations raised in the complaint? Not all complainants will clearly articulate what it is they are complaining about. In these cases you may have to look at the incident broadly in order to narrow down possible issues.
- Is there alleged criminal conduct?
- What Rules & Regulations or Policies & Procedures may have been violated?
- Review the associated police reports and related documents.
- Identify any discrepancies in the complaint and the reports.
- Analyze the evidence, lack of evidence or seek evidence that was not secured.
- Who should be questioned and in what priority?
- What questions should be asked?
- Who are the witnesses, where are they and are they available? Do they have any motive for filing a complaint and/or being less than forthcoming?
- Visit the scene. All too often witness statements are taken without the investigator having any knowledge of obstructions or surroundings. Was weather or lighting a factor? Consider photographing the scene if none were taken.

## **PREPARING FOR THE INTERVIEWS**

The most important and often the most under prepared part of the investigation is the interview. It is also the most time consuming. Never schedule yourself to have an end time for the interview. You should be mentally prepared to remain in the interview at least twice as long as you think it will take. Avoid having to re-interview people if at all possible.

Before you interview anyone involved in the complaint, you must be thoroughly prepared. That means that you have a thorough understanding of the complaint, have an above average knowledge of investigative procedures, specifically the Peace Officer's Bill of Rights, and have reviewed the questions that you have outlined. By outlining the questions that pertain to the complaint, you will be less likely to forget an issue if the involved member turns the interview in a completely unforeseen direction.

Know the history of the complainant, the witnesses, involved members and the accused member. While this does not diminish their credibility, it can assist you in determining motive and provide a direction and method to be used during the interview.

Remember that the interview can be stressful for a member or a witness and having to reschedule subsequent interviews because you overlooked an issue or were unprepared is unprofessional.

Generally, the proper sequence for interviewing is:

- Complainant.
- Civilian witnesses.
- Other agency members.
- Other involved agency members.

- The accused member(s).

## **WITNESSES AND COMPLAINANTS**

Every reasonable effort should be made to ensure that all witnesses who persons who have knowledge of the incident are located and interviewed. It is also equally important to rule out persons who may come forward later and purport themselves to be witnesses.

Some sources for witnesses are:

- The complainant and any pertinent associates.
- Police reports, CAD records, radio audiotapes, digital recordings, in-car camera video, body-worn camera video.
- Canvassing the area. Include any associated but unrelated areas in the canvass.
- Examine duty rosters and patrol car GPS data for personnel who may have been in the area but who have not come forward.
- Security videotapes

Document all your successful or unsuccessful attempts to locate and contact any witnesses.

Research all the witnesses. Not only is this helpful in planning an approach, but it can give you an indication for any possible motives.

At the very least, you should examine:

- Davis PD Persons Records.
- Criminal and driving records. Since the investigation is administrative, it excludes any CII inquiry.
- Relationship to the complainant or other witnesses.
- Relationship to the member.
- Medical or psychological history if appropriate.
- Obtain photographs of witnesses and the complainant if the investigation is complex and involved and identification is essential. Drivers' license photos are the best source, however, booking photos can be used with due caution not to prejudice the viewer.

## **CONDUCTING THE INTERVIEWS**

Interviews are often the most essential part of the personnel investigation. Results from the interview are indicative of the skill, professionalism and preparation of the investigator. It can also be a reflection of the investigator's biased, slanted and opinionated orientation.

The interview is too important to "wing it" without a plan. First, you must determine the objectives of the interview. Obviously, it is to get the facts of the allegation. Second, you must standardize your questions to address the following factors:

- The specific details of each allegation.
- Identity of each person involved and their specific role or degree of participation.
- Resolve any inconsistencies, discrepancies or conflicts with statements and physical evidence.
- Uncover underlying motives or reasons for filing the complaint, not being truthful, or backing away from full cooperation with the investigation.

By preparing a list of standard questions to ask each person, you can avoid the issue of not being fair and objective.

Normally, interviews can be conducted by one person. This is particularly true if the interview is recorded. However, there are some instances when a second investigator should be involved:

- As a monitor for a criminal interview.
- Politically sensitive or potentially explosive interviews.
- In matters involving sexual improprieties, minor children or domestic violence.

Remember, if more than one investigator is present during an interview, one must be the lead with the roles clearly defined prior to entering the room.

Record all interviews, including those conducted by telephone or video. Consent may be needed to record. Avoid any unexplained breaks, identify all persons present, identify normal breaks and avoid off recording conversations.

## **INTERVIEW FORMAT**

All interviews shall use the following introductory format (either stated on the recording or contained in a document signed by the member being interviewed):

- Date, time and location of the interview.
- Note that the interview is being recorded.
- Who is conducting the interview and their current assignment.
- Persons present during the interview.
- Purpose of the interview.
- Nature of the investigation.
- For Department members, that the member is ordered to answer questions truthfully, honestly and completely.

## **INTERVIEW TECHNIQUES**

### **General**

- At the beginning of the interview, allow witnesses to explain the entire incident in their own words without interruption. You can revisit specific areas in conjunction with your preplanned questions.
- It's very difficult to describe or capture physical actions on a recording. If witnesses are describing an area or location, they should use a sheet of paper and draw a diagram. It may be helpful to describe what they are doing in the record to make it clear. If they are describing a physical hold, position of other witnesses or actions of any involved participant, consider video recording the interview or that portion of the interview so they can physically demonstrate.
- You must ask the right question to get the right answer. Questions must be specific and direct. Do not ask general questions for specific allegations.
- Interviews are not always congenial as the person may be extremely emotional. They may be uncomfortable being with a member of the agency against whom they are making a complaint. If there is conflict, consider rescheduling the interview, recap the statement as a method for a break or break to allow the person to regain their composure.
- Identify any physiological or psychological limitations on the witnesses' ability to perceive events or give a reasonable statement.
- Make note of body language, pauses, looking from side to side or other indicators.
- At the conclusion, ask the interviewee if they have any additional information or questions that were not covered.

## Some Common Pitfalls

- Leading questions. **AVOID ASKING LEADING QUESTIONS! (see Appendix A)**
- Failure to verify answers.
- Refreshing a witness' memory rather than them explaining from memory.
- Badgering the interviewee.
- Failure to record every witness.
- Calling a person a liar.
- Engaging in a confrontation with the witness or member.
- Helping a witness to speed-up an interview.
- Failure to reenact the alleged misconduct with each witness, if it will help demonstrate what happened.

## **THE INTERVIEW**

### Complainant

Interviewing the complainant is no different from interviewing any other person involved in the investigation. Read the complainant's statement to them and ensure that it is accurate and complete. Conduct your interview using the questions you have developed as a road map. Before concluding the interview, request the following if they are warranted and have not already been obtained:

- Photographs of the alleged injury whether or not any is visible.
- Medical release.
- Additional witnesses.
- Reason for any significant time delay in making any complaint.
- Availability for follow-up.

### Agency Members Not Under Investigation.

When members who are not being accused of misconduct are being interviewed, the ground rules and procedures are the same as any other witness. Agency members, however, should be allowed to review their own reports and videos prepared or recorded in conjunction with the incident giving rise to the allegation (See Policy and Procedure 4.12-A, Body Worn Cameras).

These members do not have the same rights as accused members regarding disclosure of investigative materials. To the extent possible, do not let members know details they are not aware of.

Members should be reminded of their obligation to fully and truthfully respond to questioning and that their failure to do so could be deemed insubordination and result in administrative discipline.

If the member being interviewed makes a self-incriminating statement regarding a criminal offense, or a statement which may lead to disciplinary action, the interview should be stopped. The member should be advised why the interview is being stopped and advised of possible further actions. The investigator should contact the Office of the Police Chief for further guidance.

If the member is believed to have given a false or a deliberately misleading statement during the interview to obstruct the personnel investigation, a new internal investigation should be initiated. This can normally be eliminated or minimized through skillful interview techniques and

challenging obviously evasive and avoidance methods/responses. You must confront members with obvious discrepancies or contradictions.

### Accused Member(s)

This interview is the most critical. It should be the last interview(s) of the investigation and should be designed to answer or respond to all of the issues and allegations. It is important that you limit the necessity to conduct any follow-up interviews with the accused member. If follow up interviews are needed, the member is entitled to receive any notes, reports and recordings of the first interview prior to any subsequent interview.

You should notify the member of your intention to interview them in a written notice that contains the allegations and a time and place for the interview. The Department has a standard template that should be used. If the member requests representation, the interview should be scheduled to accommodate that request. However, serious allegations may require that the member be interviewed as soon as practical and not as a matter of mutual convenience. In these instances, you should consult with the Office of the Police Chief to ensure that POBR rights are ensured.

Most interviews do not require a *MIRANDA* admonishment because the interview is not to determine criminal liability, only whether department rules and regulations were violated.

However, if you are assigned an investigation that may be construed as a potential criminal allegation, you should proceed cautiously when it comes to admonishing an accused member of their rights. Members and their attorneys are very familiar with these admonishments and they may ask for both the *MIRANDA* and *LYBARGER* admonishments. Procedurally, first read the *MIRANDA* rights. If the member says they will talk, proceed with the interview – no *LYBARGER* admonishment is needed. In most cases the officer will say they are not waiving their *MIRANDA* rights. If that is the case, read the officer the *LYBARGER* admonishment. Prior to conducting any interview with an accused member, the investigator must be sure of the direction of the investigation in order to know what admonishments are required.

If the member refuses to cooperate during the interview after being advised of the *LYBARGER* admonishment, they should be reminded of their obligation to fully and truthfully respond to questioning and that their failure to do so could be deemed insubordination and result in administrative discipline. If the member continues to refuse to cooperate, contact the Office of the Police Chief. The member will be admonished again and if they refuse to talk, separate administrative proceedings will be initiated.

Remember, if the member is compelled to give a statement, a criminal investigator shall not be present during the interview nor can they become aware of any information obtained during the interview. The admonition of rights and the appropriate time to do so cause the most confusion for supervisors and investigators. That is why it is important to have preplanned your interview.

### **Right to Attorney or Representative**

Each member under investigation is entitled to a representative during the interview. The role of the representative is to be an observer and an advocate. Representatives or attorneys should not be allowed to answer the “tough” questions for the member. To limit their active involvement your questions should avoid the following:

- Questions that are compounded (two or more questions asked at once) or confusing.

- Questions that may constitute an unwarranted intrusion into the member’s right of privacy such as medical records or tax returns.
- Questions which do not pertain directly, or sometimes even indirectly, to the allegations which are the subject of the interrogation.
- Questions that intrude into privileged areas such as conversations the member may have had with their spouse, counselor, clergyman, attorney, therapist or the member’s representative.
- Questions which would tend to mislead the member by misrepresenting prior facts or circumstances, or statements of other persons or prior statements by the member.
- Questions which are argumentative.
- Questions which call for speculation, surmise or conjecture on the part of the member.

### **INVESTIGATION BIFURCATION - CRIMINAL AND ADMINISTRATIVE**

If the complaint or investigation is both an allegation that the Department rules were violated and an allegation or investigation of potentially criminal conduct, such as involvement in an in-custody death or shooting, the investigation must be bifurcated. The underlying facts in each incident must be evaluated to determine the procedure to follow and for purposes of making a decision on the use of a personnel investigation or criminal investigation or both.

Cases involving allegations of criminal misconduct will be investigated by an appropriate outside law enforcement agency or by an investigator appointed by the Office of the Police Chief. The Office of the Police Chief will monitor these investigations and obtain copies of all criminal reports.

Criminal investigations will always have priority over personnel investigations. The personnel investigation may occur parallel to the criminal investigation. Once the criminal investigation is completed, it will be incorporated into the personnel investigation. A personnel investigation will not generally be incorporated into a criminal investigation, which is why the investigations are bifurcated.

The goal of the criminal investigation is to determine whether a member committed any crimes. The results of a criminal investigation are provided to the District Attorney (DA) for review, independent analysis and criminal prosecution, if warranted. The goal of the administrative investigation is to determine whether Department Rules & Regulations were violated and whether the member committed the violation.

### **ADMINISTRATION AND CRIMINAL INVESTIGATION ELEMENTS:**

#### Administrative

- No right to silence
- IA investigation
- Confidential pursuant to PC 832.7
- Department disciplines
- Right to criminal report

#### Criminal

- Right to silence
- Criminal Investigation
- May not be confidential
- DA may prosecute
- No right to admin investigation or report

Helpful reminders (in order):

- The Office of the Police Chief will appoint an investigator for the criminal investigation and separate investigator for the personnel investigation.

- In most cases, an investigator from outside of the department should be used for the criminal investigation. The DA and the Chief DA Investigator should be consulted.
- In some cases, such as an officer involved shooting, a separate investigator will be appointed to conduct a criminal investigation of the incident that led to the force being used. Under such a scenario, there will be three separate, but coordinated investigations (see Policy and Procedure 3.05-AA).
- If there is a crime scene/evidence:
  - In situations where there will be a criminal investigation involving the actions of the suspect that led to force, the crime scene/evidence should be processed by the investigator(s) conducting that investigation. If not, the investigator assigned to the criminal investigation against the officer will process any scene/evidence.
  - The investigator assigned to the criminal investigation against the officer will generally seize any weapons, uniforms or other evidence from the officer(s) being investigated. Photographs of the officer(s) should also be taken.
  - In all cases, it is critical that the three appointed investigators for the three separate investigations coordinate all aspects of crime scene/evidence collection/preservation.
  - Physical evidence may be shared between all three separate investigations.
- All three investigators may interview any witnesses or other persons that may have information. Interviews are generally coordinated in order to avoid subjecting witnesses and others to more than one interview. These interviews can be shared between all three investigators.
- In many cases involving force, such as an officer involved shooting, the officer(s) being investigated will speak with their attorney and notify the investigators they want to provide a voluntary statement. When a voluntary statement is provided, **no** *MIRANDA* and *LYBARGER* warnings should be given. It is a voluntary, non-coerced (ordered) statement. All three investigators can take part in the interview, but only two of the three investigators can ask questions unless the officer(s) waives that POBR right. This type of voluntary statement can be shared between all three investigators.
- In cases where a voluntary statement is not provided, the investigator conducting the criminal investigation against the officer will read the member their *MIRANDA* rights. If the member waives their rights, all three investigators can remain in the room and conduct the interview, subject to the POBR rule that no more than two can ask questions, unless waived. This statement can be used/shared by all three investigations.
- If the member under investigation does not waive their *MIRANDA* rights, the criminal investigators (investigation the officer and investigating the incident) will need to leave the room. The investigator conducting the internal personnel investigation can then do the *LYBARGER* admonishment and conduct the compelled interview. This interview cannot be shared with the other investigators. Often times, it is best to separately seal these compelled statements and recordings so they are not shared.
- At the end of the investigations, all reports and information can be used for the personnel investigation.

## **PUBLIC SAFETY OFFICER PROCEDURAL BILL OF RIGHTS REVIEW**

The act may be found in the California Government Code

§3300

This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

### §3301

For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

### §3302

(a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

### §3303

When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

#### §3304

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d)

(1) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.

(2)

(A) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(B) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(C) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(D) If the investigation involves more than one employee and requires a reasonable extension.

(E) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(F) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(G) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(H) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (f) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

#### §3304.5

An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

#### §3305

No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

#### §3305.5

(a) A punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because that officer's name has been placed on a Brady list, or that the officer's name may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83.

(b) This section shall not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on a Brady list, or may otherwise be subject to disclosure pursuant to *Brady v.*

Maryland (1963) 373 U.S. 83, if the actions taken by the public agency otherwise conform to this chapter and to the rules and procedures adopted by the local agency.

(c) Evidence that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, shall not be introduced for any purpose in any administrative appeal of a punitive action, except as provided in subdivision (d).

(d) Evidence that a public safety officer's name was placed on a Brady list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a Brady list is proven and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, then the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.

(e) For purposes of this section, "Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland (1963) 373 U.S. 83.

### §3306

A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

### § 3306.5

(a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

§ 3307

(a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

§ 3307.5

(a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

§ 3308

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

§ 3309

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

§ 3309.5

(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.

(c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(d)

(1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the party's attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding these

provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

§ 3310

Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

§ 3311

Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

§ 3312

Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

- (a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.
- (b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.
- (c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

## **INVESTIGATIVE REPORT FORMAT**

Formal investigations shall be complete, thorough and essentially follow this format:

The investigator is responsible for:

I. Introduction/Background

*Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint or allegation of misconduct.*

II. Synopsis

*Provide a brief summary of the facts giving rise to the investigation. List any allegations of misconduct separately, including applicable Rules & Regulations or Policies & Procedures.*

### III. Investigation/Evidence

*Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section. Evidence may include:*

- i. Police Report Information
- ii. CAD Information
- iii. Radio Information
- iv. In-Car Camera/BWC information
- v. Statements of complaining parties
- vi. Statements of witnesses, including Department members
- vii. Statements of personnel subject to the investigation

### IV. Exhibits

*A separate list of exhibits (e.g., reports, recordings, photos, documents, transcripts) should be attached to the report.*

#### **INVESTIGATION FINDINGS:**

After an investigation has been completed, the report shall be forwarded to the Office of the Police Chief. The Office of the Chief is responsible for reviewing the completed report, providing the analysis of evidence and making the final finding.

A Chief will render one of the following findings:

- **Unfounded** –The investigation clearly established that the allegation is not true (Penal Code § 13012).
- **Not Sustained** –The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation in the complaint (Penal Code § 13012).
- **Sustained** –The investigation disclosed sufficient evidence to prove the truth of allegation in the complaint by the preponderance of evidence (Penal Code § 13012).
- **Exonerated** –The investigation clearly established that the actions of the personnel that formed the basis of the complaint are not a violation of law or agency policy (Penal Code § 13012).
- **Frivolous** –Means totally and completely without merit or for the sole purpose of harassing an opposing party (Penal Code § 832.5 & Code of Civil Procedure § 128.5(b)(2)).
- **Alternative Conflict Resolution** –The complaint is resolved in accordance with the ACR Program. Resolved complaints are not reportable as complaints pursuant to Penal Code § 13012.

- **Withdrawn** –The investigation is withdrawn at the request of the complaining party. Withdrawn complaints are not reportable as complaints pursuant to Penal Code § 13012.

## Appendix A

### Non-Leading v. Leading Questions

<b>Open Ended</b>	<b>Leading</b>
What did you see when you arrived?	Did you see the drunken person dancing in the street when you arrived?
What did Sergeant Frank communicate to you?	Did Sergeant Frank tell you to arrest and handcuff the person?
Who was there?	Were Sergeant Frank and Officer Winslow there?
Did you see his hands?	Where his hands in his pocket concealed?
What were your thoughts when this happened?	Where you concerned that he may have a gun in his pocket?
Why did you strike the person?	Did you strike him because you were concerned about officer safety?
Why did you use your baton?	Was the use of the baton defensive because he struck you?