

3.01

**CRAIG POLICE DEPARTMENT
Office of Chief of Police
General Order**

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Subject: Complaints Against Personnel Reference: CACP STD.170.1 - 170 .13

TO: ALL OFFICERS

I. POLICY:

The image of the Craig Police Department depends on the personal integrity and discipline of all departmental employees. To a large degree, the public image of this department is determined by the professional response of the department to allegations of misconduct against it or its employees. The department must competently and professionally investigate all allegations of misfeasance (improperly doing a lawful act), malfeasance (doing an illegal act) and nonfeasance (failing to do duty) by employees, and complaints bearing on the department's response to community needs. Any employee, who the preponderance of evidence indicates, committed an offense contrary to law or who acts unethically or violates the rules and policies of the department, who is incompetent to perform an assigned duty, or who demonstrates unsuitability for further services as a police officer is subject to appropriate disciplinary action. Complaint investigations, conducted in an objective, fair and impartial manner, provide a means to educate the citizen and help protect and maintain the integrity of both the department and its employees.

II. PURPOSE:

The purpose of this policy is to set forth procedures for making complaints against department personnel, for investigating complaints and to list and define the dispositions of complaints. It is intended to ensure that the integrity of the agency is maintained through an internal system that assures fair treatment of complaining parties, witnesses and the personnel under investigation.

III. PROCEDURES GENERAL:

Administrative reviews and internal affairs investigations ordinarily occur separate from and before any corrective actions are taken involving an employee. Often the review or investigation will determine that an employee did nothing wrong, hence no corrective action is required. In other cases, some corrective action is called for, but in the form of training and/or minor or low-level disciplinary action. In those cases a supervisor may decide to take corrective action regarding an employee in a manner involving few formalities. In a few remaining cases, however, substantial discipline is called for. The department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Employees shall make all reasonable efforts to allow citizens with complaints about the department to come forward and openly state their concerns without fear of retribution, indifference or obstruction. No employee

of this department shall attempt to dissuade a citizen from making such a complaint. All officers are obligated to explain to inquiring citizens the complaint procedures.

The Chief of Police, or his designee, is responsible for maintaining the complaint process, internal investigations, files for complaints and investigations (including complaints resolved through the Administrative Review Procedure) and the complaint and investigation recording system.

A. Responsibility for Handling Complaints:

1. The employee/supervisor taking the complaint must complete the Personnel Complaint Form for all complaints (including those resolved through the Administrative Review Procedure) and forward it to the Chief of Police.
2. All employees of this department are encouraged to try to immediately resolve a citizen complaint if the nature of the complaint is within the employee's authority to resolve. Complaints that an individual employee cannot resolve must be referred to an appropriate supervisor.
3. Any complaint regarding an employee (whether originating from a citizen, a fellow employee, a supervisor or commander, or another agency) shall be referred to either the employee's supervisor, the employee's Division Commander or the Chief of Police. If a complaint regards or somehow presents a conflict with the employee's supervisor or the Division Commander, the complaint may be referred to any other commanding officer, including the Chief of Police. A complaint regarding numerous employees or the department as a whole shall be referred to the Division Commander and the Chief of Police.
4. The Chief of Police may ask another agency to undertake the investigation.

B. Receipt of Complaints:

1. Complaints, regardless of nature, can be lodged in person, by mail or by phone at any time. As part of the follow-up investigative activity, persons making formal complaints by mail or phone will normally be interviewed and a written, signed complaint prepared. Anonymous complaints will be accepted as legitimate forms of complaint to be followed up to the extent reasonably possible.
2. Every effort shall be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints. An employee of the department, who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action.
3. Normally, a citizen with a complaint will be referred to the appropriate Division Commander or the Chief of Police who will assist the citizen in recording pertinent information. If they are not available, the employee taking the complaint will contact the on-duty supervisor who will assist the citizen. If there is no supervisor on duty,

the employee will call the on-call supervisor. The supervisor who receives the call will contact the complainant by phone and take whatever action is appropriate.

4. If the employee taking the complaint determines that the complainant is apparently under the influence of an intoxicant or drug, suffering from a mental disorder or displays any other trait or condition bearing on his credibility, he shall note such conditions on the reverse side of the complaint form. Any visible marks or injuries relative to the allegation shall be noted and photographed.
5. A department member receiving a citizen complaint through the US mail shall forward it to the Chief of Police who will determine investigative responsibility.
7. Complaints will not normally be accepted more than thirty days after the alleged incident, except when the complaining person can show good cause for not making the complaint earlier. Determination of good cause shall be made by the Chief of Police.
8. Employees who wish to file a complaint of misconduct are assured of freedom from reprisal in so doing. Confidentiality will be maintained as far as is practical. If it is necessary to make the person filing the complaint known to others, the complainant shall be advised in advance. Allegations of misconduct may be filed with a supervisor, Chief of Police, or the City Manager.

IV. PROCEDURES - INVESTIGATIVE:

The information contained in the complaint shall be evaluated. If the facts alleged raise an arguable complaint of misconduct, investigation will continue until all the facts are collected.

- A. Administrative Reviews involve inquiry into minor matters, including minor policy or procedural infractions by employees that would not have the potential for major disciplinary action. Administrative reviews should be conducted at the lowest possible level.

Procedure for Administrative Reviews:

1. There are circumstances, under which a complaint heard by a supervisor may be resolved without going further into the procedures detailed in this policy. The supervisor has the discretion to resolve some complaints summarily without requiring the complaining party to comply with all the details of this procedure.
2. The following are examples of some complaints that may be resolved summarily by the supervisor. This list cannot be all-inclusive and it is possible that types of complaints that are not listed here may be resolved early without utilizing the entire procedure detailed in this policy.

- a. Complaints where there are no discrepancies in facts and the employee's actions were consistent with department policies and procedures.
 - b. Complaints where there are no discrepancies in facts and the employee made a mistake but it was minor and easily taken care of.
 - c. Complaints where there are discrepancies in facts however, it looks like the complaint is clearly inaccurate, e.g. the allegation is not reasonable or logical.
 - d. Complaints that are clearly unrealistic, e.g. the complainant is suffering from a mental disorder which fact is known to the supervisor.
 - e. Complaints where the issue must be determined by a Court and not by the complaint procedures, e.g. complaints about a traffic citation.
 - f. Complaints where the complaining party does not request a resolution, i.e. the complainant just wants to vent frustration or pass something on.
3. In Administrative Review cases, the purpose of interviewing the employee is to obtain information to determine the facts and circumstances surrounding the allegation or complaint. The answers obtained will be considered to determine final disposition and may be used in relation to subsequent departmental charges.
- B. Internal Affairs Investigations involve inquiry into charges of more serious misconduct. Supervisory personnel are expected to investigate complaints of a potentially serious nature, which come to their attention when learning of the complaint. The degree to which a supervisor investigates a charge of misconduct will depend on the complexity of the investigation, the seriousness of potential discipline, and/or the possibility of civil liability. The more complex or serious the allegation, the more likely the Support Services Commander will be assigned responsibility for the investigation.
1. Two types of serious misconduct investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case. There is the possibility that both types may be conducted at the same time. If so, there will be separate investigators assigned.

Interview for Administrative Purposes:

Governing case is Garrity V. New Jersey, 385 U.S. 483, 87 S. Ct. 616 (1987).

1. Most administrative, or internal investigations will not require compelled answers. However, in Garrity V. New Jersey the US Supreme Court established that law enforcement employers can require employees to answer

questions pertaining to job-related conduct or face discipline for refusing. Employees must also be told that any statements made cannot be used against them in any subsequent criminal proceedings. To protect the rights of the employee and the department, employees will be advised of their rights based on the type of investigation being conducted.

2. The investigator, for any non-criminal complaints that are serious in nature and/or do not qualify for Administrative Review; will read the employee the following if they refuse to answer questions:

"You will be asked questions as part of an official investigation that are specifically directed and narrowly related to the performance of your official duties or fitness for duty. If you refuse to answer questions relating to the performance of these duties, or give untruthful answers, you will be subject to departmental charges which could result in disciplinary action, including termination from the police department."

3. Complaints that are considered serious in nature may automatically be referred to the Chief of Police, or his designee, for an internal investigation. Serious issues may include, by way of illustration and not limitation: alleged brutality, abuse of legal authority, violating or failing to enforce civil rights of citizens, sexual harassment, violations of law or issues involving multiple law enforcement personnel.
4. In such cases, the Chief, or his designee, shall:
 - a. Record, control or supervise the investigations of the employees;
 - b. Maintain confidential records of same;
 - c. Ensure that each employee under investigation is notified in writing. Notification should include the name of the complainant, nature of the complaint and other pertinent information.
 - d. Maintain close liaison with the District Attorney in investigating alleged criminal conduct. Where liability is at issue, the Chief shall similarly maintain contact with the City Attorney.
5. Should the potential for criminal charges exist the investigator will read the employee the Administrative Proceedings Rights form (see appendix). An Administrative Rights form must be initialed and signed in the spaces indicated. Refusal to do so shall be grounds for disciplinary action which may result in dismissal.
6. In an interview for administrative purposes, no Miranda rights are required. Further, the foregoing rules are inconsistent with Miranda in that employees'

statements cannot be used as evidence. As the interview does not serve criminal prosecution, the employee has no Sixth Amendment right to counsel.

Interview for Criminal Investigative Purposes:

1. If the Chief of Police believes that criminal prosecution is a possibility and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, the interviewer shall:
 - a. Give the employee Miranda rights, as appropriate or needed.
 - b. Advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.
 - (1) If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.
 - (2) The governing case is **Gardner v. Broderick, 392 U.S. 273, 88 S. Ct. 1913, 1916 (1968)**. The case made clear that a public employee may not be fired for asserting his Fifth Amendment right not to incriminate himself.

C. Counsel's Presence during Interview

1. The accused employee will be permitted to have counsel present during an interview regarding an investigation of noncriminal conduct. The right to counsel does not apply to civil or administrative matters. As a result, the role of such counsel will be somewhat restricted.
2. The accused employee will be permitted to have counsel present during an interview regarding an investigation of criminal conduct.

D. Interview Conditions

1. Normally all interviews will be conducted at a reasonable hour, preferably at a time when the employee is on duty, or during the normal waking hours for the employee unless the seriousness of the investigation requires otherwise. If the interview occurs during off-duty time the employee being interviewed shall be compensated pursuant to city policy.
2. Every effort will be made to notify employees as to who will conduct the interview; when and where it will take place, and for how long; who is authorized to represent the employee; and, how the interview will be documented.

V. PROCEDURE - INVESTIGATIVE TOOLS AND RESOURCES:

In addition to interviews of the employee and witnesses, the Chief of Police or officer in authority may require other actions in support of a criminal or internal investigation, including:

- A. **Alcohol Testing, Medical and Laboratory Examination** - The Chief of Police or officer in authority may, based on his/her observation, require a department employee to submit to a test for alcohol or drug use while on duty or other medical examinations needed for evidentiary purposes. The results may only be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.
1. If the employee is believed to be under the influence of alcohol, a certified intoxilyzer operator will administer the test. The Chief of Police, Division Commander or on-duty supervisor will witness the test and will be required to sign the intoxilyzer printout.
 2. If the employee has a reading of .01 or higher, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty by the Chief of Police or his designee.
 3. If the employee is believed to be under the influence of self-administered drugs, he may be compelled to submit to a blood and/or urine test. Tests shall be administered under medical supervision where hygienic safeguards are met. The sample will be handled using the same safeguards as evidence in a criminal process.
 4. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty as soon as possible by the Chief of Police or his designee.
 5. If an employee refuses to submit to a test (alcohol or drugs), then the Chief of Police or his designee will immediately relieve the employee from duty for failure to cooperate in an administrative investigation.
 6. Any other medical examinations will be conducted under the appropriate medical supervision.
- B. **Photograph and lineup identification procedure** - Employees may be required to stand in a lineup, or have their photograph used in a photographic lineup, for viewing by citizens for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and could result in dismissal. Photographs or videotape pictures of employees, whether or not known to the employee, may be taken for the purpose of internal investigations when related to the employee's job if the employee is suspected of misconduct.

- C. **Financial disclosure statement** - An employee may be compelled to make financial disclosure statements when it is directly and narrowly related to allegations of misconduct involving any unlawful financial gain. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding.
- D. **Polygraph** - Use of polygraph examinations in internal investigations shall be in accordance with this order. Department personnel shall be required to submit to a polygraph when ordered to do so by the Chief of Police or by a supervisor with the authorization of the Chief of Police.
1. The Chief of Police or his designee may order an employee to take a polygraph examination.
 2. The results of the polygraph examination will not be used as the sole basis for disciplinary action against any employee.
 3. Any polygraph examination administered under the provisions of this order shall be administered by a private contractor qualified to administer polygraph examinations in the State of Colorado or qualified examiner from another law enforcement agency. No department employee shall be used to administer an examination to another department employee.
 4. Refusal to submit to a polygraph examination or to truthfully answer all questions pertaining to charges in the polygraph examination shall be grounds for disciplinary action and may result in dismissal from the department.
 5. In order to comply with Colorado and federal (privilege against self-incrimination) law, the following information must be provided to the employee asked to submit to such examination:
 - a. The nature of the inquiry, the name and rank of the investigating officer, and the name and rank of any person present during the examination.
 - b. That their answers will not be used to prosecute them criminally.
 - c. That they may refuse to take the polygraph examination or to answer any questions: However, such refusal shall be grounds for disciplinary action which may include dismissal.
 - d. That answers given during the polygraph examination do not constitute a waiver of the privilege against self-incrimination as it relates to criminal matters.

- e. A Polygraph Examination Acknowledgment of Rights form must be initialed and signed in the spaces indicated. Refusal to do so shall be grounds for disciplinary action which may result in dismissal.
6. The declaration is hereby made that the intent of all of the above is that any employee who refuses to submit to a polygraph examination or refuses to answer any questions pertaining to the charges in such an examination may be terminated from employment.
7. The complaining party and/or any civilian witnesses may be requested by the investigator or Chief of Police to take a polygraph examination. If a complainant is so requested and refuses, the investigation may be terminated at that point. The investigation may, however, be continued internally. If so, the complainant forfeits all further options as described in this policy.

VI. ADJUDICATION OF COMPLAINTS:

- A. The Chief of Police will classify completed internal affairs investigations as:
 1. **Unfounded** - The acts did not occur or there is no truth to allegations.
 2. **Exonerated** - The alleged conduct occurred but it was justified, lawful or the result of adherence to proper and appropriate department procedures and techniques.
 3. **Not sustained** - The investigation does not reveal evidence sufficient to prove the allegation or was unable to verify the truth of the matters under investigation.
 4. **Sustained** - The allegation is supported by a preponderance of the evidence.
- B. Completed investigations will be maintained in confidential internal affairs files in the office of the Chief of Police. A record of any disciplinary action taken as a result of a sustained complaint will be filed in the individual employee's personnel file with a copy in the internal affairs files.
- C. All investigations of members of the department shall be kept on file for a period of 4 years after the employee leaves City employment; in a separate confidential file in the office of the Chief of Police, if the case is sustained. If it is unfounded, exonerated or not sustained, it will be retained for two years after employment and then destroyed. Certain individuals are allowed by this policy to have access to the files relating to a specific investigation. They basically include the Chief of Police, the supervisor to the employee being investigated and the employee being investigated. It shall be the policy of the department to refuse to grant access to the administrative investigation files to any other individual unless such individual has a written order from the Court requiring such release or the written permission of the department employee who is the subject of the specific investigation.

VII. Disposition of Formal Complaints:

- A. The Chief of Police shall notify the complainant, in writing, as soon as practicable, that the department acknowledges receipt of the complaint, that the complaint is under investigation, that the investigation will be completed within thirty days and that the complainant will be advised of the outcome. If the investigation exceeds thirty days, the Chief shall write the complainant a letter explaining the circumstances of the delay.
- B. Following the internal investigation, the Chief shall take appropriate action.
- C. Upon completion of the investigation, the investigator shall write a report, which details all of the facts, discovered and identifies any information still in dispute. The written report of the investigator may contain observations or conclusions as to the relative guilt or innocence of the employee named in the allegation. The investigator may state his/her findings as to the relative truth or validity of any particular piece of testimonial evidence, including any observations he/she may have personally made during the questioning of a particular witness.
- D. A copy of the investigator's written report and all other tapes and documents pertaining to the investigation shall be submitted to the Chief for review. The investigator shall send a copy of his/her written report to the employee. The complaining party shall receive a summary of the investigation to include findings and disposition.
- E. Written notice shall be included with the summary sent to the complaining party by certified mail informing that party that he/she has ten (10) days after the receipt of the report to appeal to the Chief of Police, if the party disputes the findings.
- F. If the complainant or subject of the complaint is not satisfied with the sufficiency or accuracy of the investigation or the report, they shall have the right to appeal to the Chief of Police. An appeals board, consisting of three people appointed by the Chief of Police on a case-by-case basis, will review the department finding. If the complainant remains dissatisfied with the action that has been taken by the Craig Police Department, he/she may pursue any remedies, which they may have in the judicial system.
- G. The Chief of Police shall maintain complaint files as confidential but separate from personnel files.

Approved by:

Walter K. Vanatta

Walter K. Vanatta
Chief of Police

