

# ***POLICIES, PROCEDURES, AND RULES***

<b>Subject:</b> 52.1.1 Office of Professional Standards (OPS)	<b>Effective Date:</b> November 6, 2020
<b>Reference:</b>	<b>Version:</b> 5
<b>CALEA:</b> 26.2.4, 26.2.1, 26.2.3 NT, 26.3.2, 26.3.3, 26.3.5, 26.3.1 NT, 26.3.4 NT, 26.3.6 NT, 26.3.7 NT, 26.3.8 NT	<b>No. Pages:</b> 7

## **I. PURPOSE**

The purpose of this policy is to create and maintain an environment conducive to efficient reception and resolution of complaints against police department personnel or general procedures used by the department and to establish written procedures for the administration and operation of internal investigations.

Such procedures will promote positive discipline and provide for the prompt and thorough investigation of alleged or suspected misconduct of department personnel.

## **II. DISCUSSION**

A police department is often evaluated and judged by the conduct of individual members. While the public has a right to expect efficient, fair, and impartial law enforcement, employees must be protected against false allegations of misconduct.

The Office of Professional Standards will be charged with the responsibility of following department operational procedures in processing, investigating, and recording complaints against the department or its employees [CALEA 26.2.1].

## **III. ORGANIZATION**

The Office of Professional Standards (OPS) will serve to assist all personnel regarding investigations of alleged misconduct of sworn or civilian employees.

The Chief of Police will select all personnel assigned to the OPS and designate a head of OPS. The designated head of OPS has the authority to report directly to the Chief of Police. The designated head of OPS will maintain a record of all complaints against the department or employees in a secure area. OPS assigned personnel will be provided training at the discretion of the head of OPS and Chief of Police. [CALEA 26.2.3 (NT)]

OPS assigned personnel will report directly to the Chief of Police or a designated supervisor on OPS matters and will pursue their responsibilities under the direction of the Chief of Police.

If investigations discover personnel who are engaging in serious acts of misconduct, or who have demonstrated they are unfit for duty, information pertaining to the investigation will be reported directly to the Chief of Police by the head of the OPS.

#### **IV. POLICIES**

- A. Officers selected for assignment to OPS must have demonstrated in their previous performance a high degree of investigative skills. The officer should have a personnel record clean of serious complaints. The officer should be familiar with state codes, and department policies and procedures related to internal affairs.

#### **B. Complaint Procedure Process**

1. Nothing in this policy shall prohibit any citizen from exercising any additional rights or procedures outlined in Fayetteville Civil Service Commission Rules 5:09 and 5:10:
2. Complaint procedures shall be made available to the community through the Community-Oriented Policing Division and disseminated to all employees annually. [CALEA 26.2.4].
3. All complaints against department employees are to be initially directed to any supervisor on duty [CALEA 26.2.1].
  - a. The supervisor shall provide the complaining party a “Fayetteville Police Department OPS Complaint Form.”
  - b. Supervisors may encourage phone complainants to come to the police station to complete the complaint form but must understand it is not mandatory for the complainant to do so.
  - c. In the event a complainant refuses to come to the police department, the supervisor should take the information and complete the form him or herself. The supervisor should so note the complainant's refusal.
  - d. Supervisors are not prohibited from going to a complainant's location to complete the OPS Complaint Form. Supervisors may send the OPS Complaint Form via U.S. Mail or electronically.
  - e. Complaint/compliment forms may be accessed and submitted online through the City of Fayetteville website.
  - f. All complaints against the department and its employees will be investigated to include anonymous complaints.
  - g. Complaints will not be assigned to an investigator concerning summons issued or arrests made which have not been adjudicated in a court of law unless the complainant alleges misconduct or illegal activity by the officer. The simple dislike of a charge or feeling of innocence does not, by itself, justify the formal filing of a complaint against any officer performing his duties.
  - h. The Chief of Police will carefully review each complaint for validation before disregarding it for lack of a credible complaint.
4. Complaint forms will also be completed on anonymous complaints and forwarded to the Chief of Police [CALEA 26.2.1].

- a. Discipline shall not be taken against any employee solely on the basis of an anonymous complaint. Before any discipline occurs, a case would have to be substantiated through investigation or administrative review.
5. Supervisors will explain to the complainant the process of completing the OPS Complaint Form.
  - a. Upon request, complainants who have completed an OPS Complaint Form are entitled to a photocopy of the completed complaint form at no charge.
6. Supervisors shall enclose completed complaint forms in a sealed envelope and clearly mark the envelope with the wording "CHIEF OF POLICE – COMPLAINT ENCLOSED." The envelope should either be delivered to the Chief of Police or to his office as soon as possible [CALEA 26.3.2].
7. After review of the complaint by the Chief of Police, the complaint will be assigned for further investigation by a line supervisor or an OPS investigator. Complaints that are deemed of a minor nature may be remanded to a line supervisor for further action. Criteria for assignment of such complaints may include alleged rudeness, tardiness, minor incidents or improper procedure. Complaints that are deemed to be of a more serious nature will be forwarded to the head of OPS for logging and assignment for investigation [CALEA 26.3.1 (NT)].
  - a. When possible, investigations shall be assigned to an investigator of higher rank than the employee being investigated. Circumstances may arise that make it more practical and/or expedient to assign an equal or lower ranking investigator. The Chief of Police shall have the authority and discretion to direct assignments when it is necessary to assign an investigator of equal or lower rank than the employee being investigated.
  - b. Investigations will be completed within 30 days, unless the head of OPS authorizes an extension [CALEA 26.3.3].
  - c. Investigations should be adjudicated within 10 days of the final disposition.
8. The Chief of Police, at his discretion, may place an employee on paid administrative leave from duty pending the results of an internal investigation [CALEA 26.3.7 (NT)].
9. Supervisors will avoid exposing the content or subject of a completed complaint form to anyone until the matter is resolved or directed by the Chief of Police to discuss the matter.
10. Should a complainant not wish to file a formal complaint, a supervisor may handle the complaint on an informal basis. These incidents shall be referred to as **RESOLVED COMPLAINTS**.
  - a. Once the complaint has been resolved the supervisor will provide a typed summary to the head of OPS for review and filing.

- b. In the event a complainant does not wish to file a formal complaint on what is deemed to be of a serious nature, the supervisor shall file the complaint based on information received by the complainant.
11. Complainants will be notified as to the verification of receipt of the complaint, status of a complaint and results of any investigation upon conclusion [CALEA 26.3.4 (NT)].
  12. Complaints may be generated internally by a member of the department in written form to the Chief of Police.

**C. Records Security and Storage**

1. All records pertaining to an internal investigation will be kept and stored in a locking file accessible only to the Chief of Police and the head of OPS [CALEA 26.2.2].
2. OPS investigative files shall be maintained according to the below schedule unless ordered by a court of competent jurisdiction to purge a particular file(s) [CALEA 26.2.2].

**Minimum Records Retention and Disposition Schedule**

RECORD	RETENTION	FINAL DISPOSITION
Officer involved Use of Deadly Force Incidents	Permanent Retention	Permanent Retention
Complaints resulting in sustained discipline at the administrative level *	<u>10</u> Years	Records Purged
Complaints resulting in sustained discipline at the supervisory level **	5 Years provided a 1-year infraction-free period precedes the dates of purge.	Records Purged
Complaints whose findings are not sustained, unfounded or exonerated	3 Years	Records Purged
Complaints on which no action is taken	2 Years from the date that determination is made not to initiate investigation	Records Purged

\*A complaint resulting in sustained discipline at the administrative level is defined as a written record of an oral warning, written reprimand, suspension, demotion, termination and / or resigned under investigation or in lieu of termination.

\*\*A complaint resulting in sustained discipline at the supervisory level is defined as a supervisor counseling. If an infraction occurs during the one-year period preceding the purge of the complaint, one year is added to the retention date.

#### **D. Investigations**

1. Types of investigations:
  - a. Formal investigation- A complaint assigned to a formal OPS investigator;
  - b. Supervisor Referral- A complaint assigned to the employee's supervisor for investigation;
  - c. Administrative Review- A complaint reviewed at the administrative level which does not require a formal investigation.
2. Allegations of misconduct will be investigated toward a conclusion of fact. Findings will be based on clear and convincing facts and evidence gathered during an investigation [CALEA 26.3.8 (NT)].
3. When an employee is the subject of a criminal investigation or has been charged with a criminal offense, the department may suspend any related administrative investigation until the criminal matter has been resolved.
4. Simultaneous criminal and internal investigations shall be separate, and no Fayetteville Police Department employee who is investigating one shall investigate the other. No criminal investigator shall have access to compelled statements in the internal investigation (*Garrity v. New Jersey*, 385 USC 493).
5. The head of OPS will notify both the complainant and employee(s) in question a complaint has been received and an investigation is impending.
  - a. Notice of the complaint will not be given to the employee(s) in cases in which such notification may be detrimental to the investigative process.
  - b. Once notified of the complaint and investigation, the employee(s) is prohibited from discussing or interfering with the investigation.
6. Employees being required to submit a report or be interviewed who are the subjects of an OPS complaint and/or investigation will receive an OPS Investigation Warning Form, be advised of the nature of the complaint and allowed to read the complaint form [CALEA 26.3.5].
  - a. The OPS Investigation Warning Form will advise the employee he or she is part of an official investigation, advise of certain rights associated with self-incrimination, and possible departmental charges for refusing to cooperate.
7. Before an interview is conducted and excluding a conflict of interest, the employee may have a representative of his or her choosing present [CALEA 26.3.5].
  - a. Interview sessions shall be for reasonable periods and shall allow for such personal necessities and rest periods as are reasonably required.

- b. Interview sessions shall be conducted while the employee is on-duty whenever practical.
  - c. If an employee is required to submit to an interview during off-duty time, the employee shall be compensated in accordance with normal department procedures used for compensation of extra hours.
8. Employees may be compelled to answer questions related to their duties or fitness for duty. (Garrity v. New Jersey, 385 USC 493)
- a. When an employee refuses to answer questions posed in an administrative investigation on the grounds or fear of criminal self-incrimination, the employee may be ordered to answer such questions, and shall be informed none of the information provided can or will be used against him or her in any subsequent criminal prosecution.
  - b. The employee is subject to possible disciplinary action for refusal to answer questions. The employee may be given a direct order to cooperate with the investigation. Failure to obey a direct order may result in the employee being placed on administrative leave and subject to further disciplinary action [CALEA 26.3.7 (NT)].
  - c. Employees may be compelled to undergo an examination for the detection of deception. The results of such testing shall not be usable in any subsequent criminal investigation but may be used to determine dispositions of administrative matters [CALEA 26.3.6 a. (NT)].
  - d. Employees may not refuse to submit to other non-testimonial administrative examination (drug screening by urinalysis or blood test, medical examinations, line up, photographs, financial statements when they are material to the investigation, etc.) [CALEA 26.3.6 b., c., d., e., & f (NT)].
  - e. Departmental property or personal property authorized for use by the department in connection with official police duties may be inspected and / or searched at any time in accordance with law. An employee's personal property shall be afforded the same protection as that of any other citizen and, in criminal cases, the accused employee's constitutional rights will be protected.
  - f. Refusal to submit to such examinations or non-testimonial examinations where required may be grounds for dismissal [CALEA 26.3.7 (NT)].
  - g. Occasionally, an OPS investigation will discover employee misconduct and / or policy violation/s against an employee who was not the original subject of the investigation, and the misconduct and / or policy violation/s were not included in the original complaint. The Chief of Police will decide if the investigation will be part of the original investigation or a new investigation will be generated. In all circumstances, the employee will receive an OPS Warning Form and be advised of the nature of the complaint before he or she is interviewed.
9. Employees are strictly prohibited from interfering with or discussing an ongoing investigation. However, the involved officer/s can receive emotional or moral support from certified peer support personnel as a result of a job-related stress or incident in which the emergency responder was involved while acting in his or her official capacity.

## E. Dispositions

1. Dispositions will be decided according to the following categories:
  - a. **Unfounded**: When the investigation clearly indicates the act complained of did not occur.
  - b. **Exonerated**: When the investigation clearly indicates the act occurred, but the act was justified, lawful, and proper.
  - c. **Not Sustained**: When the investigation discloses insufficient evidence to prove or disprove the allegation made in the complaint.
  - d. **Sustained**: When the investigation discloses the act did occur and constitutes misconduct.
  - e. Only case dispositions which have a finding of “Sustained” shall be filed in the employee’s personnel file.
2. The Chief of Police will be notified, in writing, of the final disposition of any complaint within 10 days of the conclusion of an investigation.
3. The Chief of Police will determine disciplinary measures for investigations of allegations of misconduct resulting in a disposition of “sustained.” Consideration in disciplinary measures should be given to ensure public confidence in the agency, to protect future liability and to deter future misconduct.
4. Employees will be notified, in writing, of the final disposition of any complaint within 14 days of the conclusion of an investigation. Whenever an officer is dismissed, demoted or suspended according to policies and procedures, he or she may grieve or appeal such action through civil service provisions where appropriate.
5. Complainants will be notified, in writing, of the disposition of a complaint within 14 days of resolution of a complaint [CALEA 26.3.4 (NT)].
6. At the conclusion of every fiscal year, the head of OPS will create an annual statistical summary based on the records of all OPS investigations. This annual report will be made available for review to interested persons [CALEA 26.3].