

CITY OF PORTLAND, OREGON



Bureau of Police

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Integrity • Compassion • Accountability • Respect • Excellence • Service

EXECUTIVE ORDER

DATE: July 31, 2007

TO: All Members

RE: DIR 330.00 Internal Affairs, Complaint Investigation Process. This directive has been significantly revised. All members should review content.

330.00 INTERNAL AFFAIRS, COMPLAINT INVESTIGATION PROCESS

Index: Title; Citizen Complaints; Complaint, Internal Affairs; Investigation

Refer: ORS 810.410 Arrest and Citation

City Code PSF-5.19 3b.(5)

City Code PSF-5.20

DIR 341.00 Disciplinary Process

DIR 342.00 Performance Deficiencies

DIR 343.00 Criminal Investigations of Police Bureau Employees

DIR 344.00 Prohibited Discrimination

Complaint Log form (IAD)

Appropriate Bargaining Agreements

POLICY (330.00)

The Portland Police Bureau and the Independent Police Review Division (IPR) will work in partnership to address complaints of misconduct against members of the Portland Police Bureau. Jointly, the Bureau and IPR will ensure that:

- a. Complaints against Bureau members are investigated with the highest standards of accountability, impartiality, and professionalism.
- b. Behaviors or trends that erode community trust and confidence are identified and addressed.
- c. Individual and organizational accountability for police conduct is promoted.
- d. Policy and training issues that will strengthen our police and community relationship and quality of service are identified.

PROCEDURE (330.00)

Some of the procedures in this directive may not apply to non-permanent and/or probationary members who may be subject only to applicable provisions in the appropriate bargaining agreement, city code, or administrative rules.

Directive Specific Definitions (330.00)

Declination: IAD may decline to investigate some or all of the allegations in a complaint as subsequently outlined in this directive. IAD may refer the information in a declined complaint to another Bureau official (e.g., Chief of Police Office, IAD manager or precinct commander) or other appropriate agency for whatever policy, personnel, training, or other actions the Bureau or IPR deems appropriate.

IAD Investigation: A complete investigation conducted by, or at the direction of, the Internal Affairs Division that is submitted to the member's RU manager for findings.

Mediation: A voluntary non-disciplinary, confidential process where a neutral professionally trained mediator helps citizens and officers speak directly with each other in an effort to resolve complaints.

Service Complaint: A formal non-disciplinary process where a supervisor evaluates and debriefs a complaint that alleges a minor rule violation or raises a quality of service issue.

Role of the Independent Police Review Division (IPR) (330.00)

IPR is responsible for receiving and numbering citizen complaints regarding allegations of misconduct against members of the Bureau, monitoring Internal Affairs Division (IAD) investigations of citizen complaints, coordinating appeals of Bureau findings of citizen complaints, and recommending changes in police practice and policy. IPR may conduct its own investigation into allegations of police misconduct at the discretion of the IPR Director.

Receiving Complaints and the Intake Process (330.00)

Citizens may contact IPR directly to initiate complaints against Bureau members. Members receiving citizen complaints should attempt to resolve complaints about minor rule violations or quality of service at the time they are made; otherwise the complainant will be referred to IPR. If the citizen requests that the member receive the complaint instead of IPR, members shall accept and document the information from any person, including other members, juveniles, third parties, and anonymous sources. The member will forward the information, through channels, to IAD (to be forwarded to IPR). If it is impractical for the member to accept complaint information when requested, members shall refer the citizen to a supervisor.

Members, who observe misconduct, will document and transmit the complaint to IAD through their RU manager. The complaint will be evaluated as an internal Bureau-initiated complaint. Members may communicate directly with IAD investigators regarding alleged misconduct for which they have knowledge.

Once a complaint is received by IAD, the authority and responsibility for processing, investigating, or referring the complaint is delegated by the Chief of Police to the IAD manager. When allegations of misconduct require immediate attention, supervisors will initiate the necessary investigation and notify the Branch chief through the chain of command.

Documentation (330.00)

The following information, if available, will be included in the documentation of a complaint:

- a. The complainants' and witnesses' names, addresses, telephone numbers, and dates of birth.
- b. Date, time, and place of alleged misconduct.
- c. Identification of the member(s) involved.

- d. Nature of the complaint.
- e. Any action taken in an attempt to resolve the complaint.

Complaint Resolution and Assignment (330.00)

Internal Affairs complaints will be handled through one of the following means:

- a. IAD Investigation.
- b. Service Complaint.
- c. Mediation.
- d. Declination.

The IAD manager shall assign each complaint where it will receive the most effective resolution and treatment. The IAD manager will keep IPR informed of the disposition all allegations in each complaint. If IPR disagrees with a disposition, IPR will notify the IAD manager. The IPR director and the IAD manager will confer as to whether an independent IPR investigation should be conducted. If IPR does not promptly notify IAD of a disagreement, the IAD manager's decision will be considered final. The IAD manager shall consider the following criteria in determining how a complaint will be handled:

- a. If there could be a violation of criminal law.
- b. The seriousness of the alleged misconduct.
- c. Where the accused member is currently assigned.
- d. If there could be a conflict of interest.
- e. If there is a pattern of violations.
- f. Input provided by the member's RU commander.
- g. The ability of the RU to conduct an investigation.

Generally, IAD investigators will conduct IAD investigations. However, the IAD manager will consider that the primary responsibility for member conduct, maintenance of Bureau standards, and compliance with policies and procedures lies with the member's RU manager and direct supervisor. The IAD manager, when appropriate, may assign complaints to be investigated or resolved at the unit or division level. If IAD assigns a complaint to be investigated at the RU level, the investigator will follow investigative processes outlined in this directive.

In some cases, IPR may choose to conduct its own investigation or participate in the IAD investigation. IPR will be notified of all findings for citizen complaints and will have primary responsibility to communicate with the citizens. IPR will notify the citizens and IAD will notify members of the outcomes of complaints.

IAD is responsible for the review and maintenance of all Internal Affairs records. Police Liability Management may review closed IAD cases for compliance with policy, rules, and procedures related to the review of claims against the Bureau.

IAD Investigations (330.00)

Member Responsibilities:

Members will cooperate fully and be truthful in giving statements about events under investigation. No member shall conceal information, impede, or interfere with the reporting or investigation of any complaint. Members who become aware of the investigation of an incident about which they have knowledge shall contact the investigator(s) with this information.

Investigator Responsibilities:

When assigned an IAD investigation the investigator will:

- a. Maintain the integrity of the case file and the confidentiality of the investigation.
- b. Conduct a complete, thorough, and objective investigation following current IAD procedures for conducting investigations.
- c. Complete the investigation and return an investigative summary to IAD within 10 weeks of the date the complaint was assigned.
- d. If the investigation is not completed within the scheduled time, the investigator should document (in the case file) the reason for the delay. The investigator will contact the complainant by letter and advise of the delay. If a member has been interviewed, that member must also be contacted and advised of the delay. The complainant and member should be contacted every six weeks and that contact will be documented in the case file.
- e. Audio record all interviews of members and, if possible, all non-Bureau complainants or witnesses. A separate recording is required for each interview conducted. Each recording will be labeled with the IAD case number, the name of the person interviewed, and the date. If an interview is not recorded, the investigator will document the circumstances that precluded the recording in the interview narrative report.
- f. Advise all involved members of their rights as prescribed by the appropriate bargaining agreement.
- g. Write an individual narrative report or provide a transcription for each person interviewed.
- h. Write an Investigative Summary Report, which outlines the overall results of the investigation. If appropriate, any conclusions regarding the reliability of witnesses, and the importance and relevance of facts involved in the alleged misconduct will be included in the notes section of the report. Investigators will not recommend a finding.
- i. Return the Investigator Summary Report to the IAD manager for review and approval.

IAD Manager Responsibilities:

The IAD manager will ensure that the assignment, investigation, documentation and record maintenance of complaints received are done in accordance with this directive. The IAD manager will:

- a. Review all citizens complaints received from IPR and determine how the complaints will be handled.
- b. During the course of an investigation of a complaint, the IAD manager may determine that there are additional allegations regarding member conduct that need to be included in the investigation.
- c. Review all investigations to ensure accuracy and completeness, and to ensure that contractual, directive, and city code requirements have been met for citizens and members.
- d. Forward the Investigator Summary Report to IPR for review and comment. Consult with IPR about any recommendations for additional investigation or other quality issues.
- e. Forward the completed IAD investigation to the accused member's RU manager who is responsible for case review and finding(s).
- f. Ensure the accused member's RU manager has recommended a finding (based on a preponderance of evidence) for each allegation in the complaint. The finding(s) must cite the appropriate section of the Manual of Policy and Procedure. If the recommended finding is not supported by a preponderance of the evidence, the IAD manager may controvert the finding.

- g. Within two weeks of the return of a completed case, dispose of the case as follows:
 - 1. If the case involves a finding of other than sustained or controverted, close the case and provide a letter of disposition for the citizen and accused member. Forward the citizen's completed letter to the IPR director who will forward the letter to the citizen. IAD will notify the member(s) (through channels).
 - 2. If the case involves a controverted or sustained finding, forward the completed case and findings to the Review Board Coordinator for consideration by the Use of Force Review Board or the Performance Review Board. At the end of the review, provide notice of the outcome as noted above. The accused member(s) will be notified of the outcome by Personnel.

RU Manager Responsibilities:

- a. The IAD case will be designated confidential and all reports processed accordingly. RU managers will ensure that files are not reviewed by the accused member(s) or citizens.
- b. Ensure that IAD investigations assigned to the RU for investigation are thoroughly investigated and the investigative summary is sent to IAD within 15 weeks from the date it was assigned by IAD.
- c. Review IAD investigations assigned to the RU before the investigator's summary is returned to IAD for review by IAD and IPR.
- d. Upon receipt of a case for review from IAD, determine which section(s) of the Manual of Policy and Procedure may have been violated based on a preponderance of the evidence.
- e. Recommend a finding for each allegation, listing the members who should have entries on their IAD records, and articulate in writing the justification for each finding.
- f. RU managers may recommend a bifurcation of the findings that were not part of the complainant's allegation(s) but were uncovered during the IAD investigation. If the bifurcated findings consist of minor rule violations or quality of service, they need not be sustained as part of that IAD investigation, but handled as a debriefing. If the new findings are more serious, the RU manager may send the case back for additional investigation, if necessary, or make a recommendation on the new finding.
- g. Within two weeks of receipt of an IAD case review, return the case file, through channels, to his/her Branch chief. An exception to this limit may be granted by the Branch chief.
- h. If a debriefing is recommended, as long as the recommended finding is not controverted, conduct the debriefing in a timely manner. The RU manager will complete the debriefing memo and forward the original to the Review Board Coordinator and a copy of the original will be sent to IAD.

Branch Chief Responsibilities (or Chief of Police's designee):

- a. Review the RU manager's recommendations for findings and discipline within seven days and then forward to IAD.
- b. If a finding includes discipline that is less than a suspension, return the case file to the RU manager to implement discipline. Documentation of the completed discipline will be returned to the Branch chief who will forward it to IAD.
- c. If a finding includes discipline of a suspension or greater, forward the case file to IAD.

Review Board Coordinator Responsibilities:

Upon receipt of a controverted finding or Process-Suspension or Greater case files do the following:

- a. The Review Board must be convened as soon as it is reasonably possible to do so.
- b. Coordinate with the RU mangers and the Branch chief to schedule any requested due process meetings.

Service Complaints (330.00)

Complaints received from citizens regarding quality of service or minor rules violations that would not result in discipline may be handled as service complaints. There are two kinds of service complaints:

- a. IAD initiated service complaints are assigned to precincts/divisions for resolution at the discretion of the IAD manager. The IAD manager may assign a service complaint over the objection of the citizen.
- b. Precinct generated service complaints are complaints about the quality of service or minor rules violations initially filed by complainants at the precinct or division level.

RU Managers Responsibilities:

RU managers are responsible for ensuring that all service complaints are handled quickly and effectively and that the following minimum procedures are followed:

- a. Within 14 days of receipt, supervisors shall:
 - 1. Evaluate each complaint.
 - 2. Contact the citizen to discuss the complaint.
 - 3. Critique with members the Bureau expectations of compliance with rules.
 - 4. Convey the RU manager's expectations for quality of service.
 - 5. Explain the citizen's perception of the member's behavior.
 - 6. Discuss alternative approaches for improving public satisfaction with service.
 - 7. Document the briefing in the Service Complaint Resolution Memo (SCRM).
- b. IAD initiated service complaints shall be assigned to supervisors to make a good faith effort to contact and provide feedback to the citizen. Generally this means three attempts which shall be documented in the SCRM.
- c. If a supervisor, after completing an IAD initiated service complaint, concludes that the complaint is unfounded or a member has been misidentified as having been involved in an incident, the supervisor will document the conclusion and the reasoning behind it in the SCRM.
- d. All IAD initiated service complaints must be documented on a SCRM and forwarded by the RU manager to IAD.
- e. All precinct generated service complaints from the public shall be documented in a Bureau approved complaint log. RU managers will ensure that copies of the complaint logs are retained at the division for three years. An example of the complaint log can be found on the Bureau's Intranet.
- f. The RU manager may decline to process a precinct generated service complaint about a minor rules violation if the member met the RU manager's highest expectations for quality and courtesy of service, and the complaint falls into one of the following categories:

- 1. The conduct, as alleged by the citizen, was in full compliance with Bureau policy and training.
- 2. The citizen is contesting his/her guilt with respect to a citation for a traffic offense.
- 3. The complaint is grossly illogical or improbable on its face.
- 4. There is no reasonable possibility of identifying the member involved in the complaint.
- 5. The complaint was previously handled, resolved, or adjudicated and the complainant has presented no new information that was not previously considered.

The supervisor will make a good faith effort to contact the complainant and explain why the conduct or service was proper or why the complaint has been declined. A service complaint resolution memo is not required. The declined complaint does not need to be reported to IAD or IPR. This declination will be fully documented in the complaint log.

- g. If the complaint is not declined and alleges conduct or service that would not justify formal discipline, but requires correction or improvement of service, the supervisor shall discuss the allegations with the citizen and member(s). The supervisor shall attempt to resolve the complaint fairly and to the satisfaction of the complainant. Whether or not the citizen is satisfied, the RU manager shall send a SCRM to IAD.
- h. If the complaint alleges disparate treatment, unlawful use of force, or other conduct too serious to be handled as a service complaint, the supervisor shall document the complaint and send the complaint directly to IAD. IAD will forward the complaint to IPR for further review and action.

IAD Responsibilities:

- a. IAD will periodically audit precinct service complaint logs, including contacting citizen to ensure that log entries are accurate and complete.
- b. IAD will receive and review all Service Complaint Resolution Memos prepared by RU supervisors.
- c. The IAD manager will review precinct generated service complaints and:
 - 1. Request additional information or action from the RU manager.
 - 2. Forward citizen initiated complaints to IPR.
 - a) Forward the case to IPR with a recommendation to approve the resolution as a service complaint. The IAD manager shall consider, but is not bound by, the citizen's statement of satisfaction or dissatisfaction when making a recommendation to IPR.
 - b) Forward the case to IPR with a recommendation that IPR dismiss the complaint if it is clear from the citizen's statement that the complaint is untimely, false or fails to state misconduct.

Mediation (330.00)

If the IPR director and the IAD manager conclude that mediation will meet the needs of the Police Bureau and the community, the mediation option will be offered to the involved officer through his/her RU manager. This option is contingent upon the mutual agreement of everyone involved. The IAD manager, the accused member's RU manager, or the accused member may decline an IPR recommendation to mediate a complaint. Qualified mediators will be managed and assigned through IPR. Mediation outcomes will not result in a finding.

Declination (330.00)

When deciding whether to decline an investigation, the IAD manager will follow the guidelines established in City Code PSF-5.20. The IAD manager may consider the complaint, the IPR intake investigation, police reports, dispatch records, and similar documentation of the incident. The IAD manager may also request and consider additional information from witnesses to clarify limited factual issues. The limited additional inquiry of witnesses is intended to improve the IAD manager's decisions. It is not a substitute for a full investigation and does not result in findings. The IAD manager may decline to investigate the allegations in a complaint forwarded by IPR under the circumstances described below:

- a. No Misconduct: IAD may decline to assign allegations for a full investigation and take no further action if the IAD manager finds that the employee's conduct, as alleged by the complainant, does not violate Bureau policy.
- b. Minor or De Minimus Rules Violation: IAD may decline to assign allegations for a full IAD investigation and take no further action (or refer the complaint to the appropriate RU commander for an informal briefing) if the IAD manager finds that the employee's conduct, as alleged by the complainant, constitutes a minor technical violation that if sustained would not result in discipline and is too minor or too vague to justify a service complaint.
- c. No Jurisdiction: IAD may decline to assign a complaint for a full investigation and take no further action if the complaint is against a non-employee, a former employee, or an employee of another department or other agency. The IAD manager may also decline to investigate and take no further action if the employee resigns, retires, or will no longer be employed by the Bureau by the time an investigation and disciplinary process could be completed. Even if the Bureau lacks jurisdiction, IAD may decide to investigate a complaint based on the nature and seriousness of the allegations or based on a request from IPR or another law enforcement agency. For example, if serious misconduct has been alleged, the IAD manager may order an investigation to:
 - 1. Place the findings in the employee's personnel or IAD file.
 - 2. Forward the findings to another agency, review the actions of the employee's supervisors.
 - 3. Recommend a review of Bureau training or policies.
 - 4. Discipline may also be imposed if the employee returns to service.
- d. Judicial or administrative review: IAD may decline to assign allegations for a full investigation and take no further action if the allegations have been or will be subject to effective judicial or administrative review. A pending tort claim or lawsuit generally shall not be a sufficient basis for declining to investigate a complaint.
- e. Unidentifiable employee: IAD may decline to assign a complaint for a full investigation and take no further action if the IAD manager finds that a reasonable investigative effort would not be able to identify the complained-against employee.
- f. Previously investigated or adjudicated: IAD may decline to assign allegations for a full investigation and take no further action if the IAD manager finds that the alleged conduct was previously investigated or adjudicated by the Bureau and that the current complaint does not provide substantial new evidence.

- g. Lacks Investigative Merit: IAD may decline to assign allegations for a full investigation and take no further if:
 - 1. IAD manager finds there is no reasonable possibility that an investigation either will sustain the allegation; or
 - 2. IAD manager articulates specific reasons why the complaint is not credible or reliable.
- h. Insufficient Resources: Refer to City Code 5.19 3(b). If the IAD manager finds that IAD's workload significantly exceeds available resources and will continue to exceed for the foreseeable future, available resources may be focused on more serious or more provable complaints and decline less serious or less provable complaints. IAD will notify the IPR Director if IAD's workload exceeds IAD's resources to such an extent that IAD must significantly raise its threshold for investigating complaints.

Criminal Complaints Regarding Members (330.00)

Allegations of member misconduct, which include a possible criminal law violation, will be initially treated as a criminal case rather than an IAD investigation. Criminal cases involving members will be processed according to DIR 343.00, Criminal Investigations of Police Bureau Employees.

Unlawful Employment Practices, Discrimination Complaints, EEO (330.00)

Complaints by members, which allege unlawful employment practices, will be processed according to DIR 344.00 Prohibited Discrimination and HR Administrative Rule 2.2.

Personnel Performance Deficiencies (330.00)

Complaints regarding job performance problems or minor work rule violations may be processed according to the procedures in DIR 342.00 Performance Deficiencies.

Temporary Personnel Action (330.00)

A temporary personnel action may be taken if the alleged conduct is so serious in nature that prompt action is necessary to protect the public, the member, or the Bureau, or when it is reasonable to question the member's mental, physical, or emotional ability to properly and safely pursue his/her normal duties and responsibilities. A temporary personnel action of immediately relieving a member from duty can be taken by a supervisor or relief commander after consulting with the RU manager. The Personnel manager will be notified as soon as possible.

The relief of duty must be approved by the Chief of Police before the start of the member's next shift. Factors considered in taking a temporary personnel action include, but are not limited to:

- a. The likelihood of criminal charges against the member.
- b. The member's ability to effectively continue performance of duty.
- c. Involvement in alleged serious misconduct.
- d. Potential or actual bringing of extreme discredit to the Bureau.

As part of a temporary personnel action, the Chief of Police may order the member to turn in his/her Bureau identification, Bureau-issued badge, hat badge, electronic security key, and other bureau-issued equipment (radios, weapons, etc.).

A temporary personnel action is distinguished from a disciplinary action in that it is a predetermination action. Members relieved of duty in a temporary personnel action will be

relieved with pay. The Chief of Police, or his designee, may elect to take the temporary personnel action of administrative transfer.

Purging of IAD Files (330.00)

The policy and procedures for purging IAD files pertains only to those files that are in the custody and control of IAD. Information from IAD investigations may reside in the files of the Personnel Division, Chief's office, IPR or the Bureau of Human Resources.

Unless otherwise directed by the Chief of Police or court order, individual IAD case files and other references may be destroyed after three years from the date of the incident when assigned the following case dispositions:

- a. Exonerated/exonerated with a debriefing
- b. Unproven/unproven with a debriefing.
- c. Declined.
- d. Mediated.
- e. Service complaints.
- f. Administratively referred.

All sustained IAD cases will be permanently retained in files, unless expunged pursuant to all the criteria listed below:

- a. A minimum of five years have elapsed since the incident date of the last sustained complaint.
- b. The discipline imposed was less than demotion.
- c. Authorized by the Chief of Police.

Authorization is initiated by the requesting member's RU manager through an inter-office memorandum to the Chief of Police. The memorandum must contain a brief overview of the case, the discipline imposed, a summary of the member's conduct and performance since the last sustained case, and the RU manager's rationale for the decision to support or deny the request to expunge the record.

Files of IAD investigations in which the discipline imposed was the member's termination of employment, or investigations that precipitate the member's resignation, will be retained for not less than 10 years from the date of separation.

The Chief of Police retains the authority to order the purging of an IAD file without the member making a formal request.

IAD Findings for Complaints (330.00)

The findings made in an IAD case include:

- a. Unproven: Allegation not proven by a preponderance of the evidence.
- b. Unproven with a debriefing: While the allegation is not proven by a preponderance of the evidence, a critique of the complaint with the member should be conducted.
- c. Exonerated: Actions of the member were within the policies and procedures.
- d. Exonerated with a debriefing: While the member's actions were within the policies and procedures, a critique of the complaint with the member should be conducted.
- e. Sustained: Member found to be in violation of policy or procedure.

RESPONSIBILITY, ACCOUNTABILITY AND CONTROL (330.00)

The IAD manager will ensure that the assignment, investigation, and documentation of complaints received are done in accordance with this directive. Each RU manager will ensure that complaints received by their RU are processed in a timely manner.

FOR MORE INFORMATION:

Please contact Marsha Palmer, Strategic Services Division, at 503-823-0264.

ROSANNE M. SIZER Chief of Police

RMS/mp