

PSF-5.01 - Independent Police Review - Complaint Intake and Processing

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Administrative Rules Adopted by Auditor's Office Pursuant to Rule-Making Authority

ARB-PSF-5.01

Definitions:

- **Administrative Closure:** A determination by the Director that IPR will not take further action on a complaint based on its authority under City Code and Administrative Rules adopted by the Auditor's Office.
- **Administrative Investigation:** A complete investigation into allegations of policy violations, conducted by or at the direction of Internal Affairs or Independent Police Review (IPR).
- **Complaint:** Any complaint made to the City by a member of the public, a Police Bureau officer, or a civilian PPB employee of alleged misconduct by a Bureau member.
- **Director:** Director of the Independent Police Review or Director's designee.
- **Mediation:** A voluntary, non-disciplinary, confidential process used to resolve certain complaints by community members. Mediation involves the use of a neutral, professionally trained mediator to help facilitate direct discussions between a complainant and Bureau members.
- **Member:** A sworn member of the Portland Police Bureau or a supervisor of sworn employees.
- **Misconduct:** Conduct by a member that violates Bureau regulations, orders, directives, or other standards of conduct required of City employees.
- **Supervisory Investigation:** A formal, non-disciplinary process in which the involved member's supervisor is tasked with investigating a complaint to determine whether a member provided poor quality of service or committed a rule violation that, if sustained, would not result in corrective action greater than command counseling.

Policy: The Independent Police Review, a division of the Auditor's Office, serves as the City's police oversight agency. IPR seeks diverse community input regarding Portland Police Bureau conduct, practices, and policies. Working with community partners and the Police Bureau, IPR seeks to identify incidents and patterns of behaviors that erode community trust and confidence. IPR aims to provide police accountability at both the individual and organizational levels through all of its endeavors.

A. Receipt, Initial IPR Investigation for Framing Allegations

- 1) A community member may file a complaint (e.g., verbal, written, electronic) regarding alleged member misconduct with IPR, Internal Affairs, a Police Bureau Precinct, the Police Commissioner, or with any Bureau member.

- 2) IPR may receive referred complaints from PPB, Police Commissioner, or another City agency or employee.
- 3) When IPR receives a new complaint regarding the conduct of a sworn member of the Police Bureau, IPR will:
 - a) Assign a case number, if Internal Affairs has not already done so;
 - b) Assign an investigator;
 - c) Send notification to the complainant and involved officer that IPR has opened a case and provide each complainant and the involved member with a tracking number and informing each complainant of the allegation classification and assignment;
 - i) These notifications may be delayed in cases of criminal misconduct or where notification may compromise the integrity of an investigation; and
 - d) Gather information about the complaint through an initial investigation.
- 4) During an initial investigation, the assigned investigator will:
 - a) Interview complainant or make three attempts to contact;
 - i) All attempts to contact a complainant shall be noted in the case chronology;
 - ii) Investigators will make contact attempts through a variety of means such as mail, telephone, site visits, email, or any other means available to achieve contact.
 - b) Gather available police reports, dispatch records, and other documentary evidence;
 - c) Retrieve or request that perishable evidence such as video or audio evidence be preserved;
 - d) Write an initial investigation report that documents the initial investigation.
- 5) Allegation formation.
 - a) If IPR opens a case the assigned investigator shall review the available material to determine which Police Bureau policies may have been violated. All alleged policy violations will be reflected in the investigation as allegations of misconduct.
 - b) Allegations will be written in such a way as to:
 - i) Accurately reflect the concerns of the complainant;
 - ii) Be phrased as violations of directives; and
 - iii) Be specific enough to give the involved member notice of what misconduct they are being accused.
 - c) Allegations are subject to changes as the investigation uncovers new information or if the original allegation was improperly framed.
 - d) All allegations against an involved member stemming from the same incident shall be investigated by a single investigative unit. The most serious allegation will govern the assignment of the case.

B. Assignment of Complaints

- 1) Once the complainant's allegations have been identified, IPR will either:
 - a) Refer the complaint to Internal Affairs for an administrative investigation or Supervisory Investigation;
 - b) Request that Internal Affairs investigate with IPR involvement;

- c) Provide notice to Internal Affairs that IPR will conduct an independent investigation under the following circumstances:
 - i) When Internal Affairs has a conflict of interest or is unable to conduct an investigation;
 - ii) Allegations involve a member of the rank of Captain or higher;
 - iii) Allegation involving a claim of disparate treatment based on a protected status such as race, gender, sexual orientation, or gender identity.
 - iv) Allegations involving a community member who is part of a vulnerable population, such as
 - (1) Juveniles
 - (2) Person experiencing mental health crisis
 - (3) Persons with a physical disability;
 - v) Allegations that a Police Bureau member retaliated against someone for initiating a complaint against a member;
 - vi) Allegations arising from a crowd control event, demonstration, or other constitutionally protected speech event;
 - vii) Cases in which IPR disagrees with the Internal Affairs Captain's processing or assignment decision;
 - viii) Matters that the Director determines are in the public interest and over which IPR has jurisdiction under City code; or
 - d) Administratively close complaint as authorized under City Code 3.21.120(D) and Protocol 5.19 (Case Handling Guidelines).
 - i) If after an initial investigation, the complaint is administratively closed, IPR will provide notification to the complainant and involved officer.
- 2) When Internal Affairs receives a complaint from IPR, Internal Affairs will follow its procedures as outlined in Police Bureau Directive 330.00 (Internal Affairs, Complaint Intake and Processing) for the processing and assignment of the complaint. Possible outcomes include:
- a) Administrative Investigation conducted by Internal Affairs,
 - b) Administrative Investigation conducted by the officer's manager,
 - c) Administrative Investigation conducted by IPR,
 - d) Investigation by an outside entity, such as Bureau of Human Resources, when Internal Affairs has an actual conflict of interest or a special circumstance arises that, in the opinion of the Internal Affairs Captain or designee, prohibits Internal Affairs from conducting a timely or credible investigation,
 - e) Supervisory Investigation,
 - f) Mediation, or
 - g) Administrative Closure.
- 3) A case shall be assigned for administrative investigation when there is a prima facie allegation of conduct that, if true, violates one or more Bureau directives and could result in discipline.
- 4) The Internal Affairs Captain, or designee, shall notify IPR of the processing and assignment of each complaint. If IPR disagrees with the decision, IPR will promptly

notify the Internal Affairs Captain, or designee. IPR has the authority to conduct the administrative investigation if the disagreement is not resolved.

- 5) IPR may request that Internal Affairs participate in an IPR investigation without relinquishing the primary investigative role.
- 6) Internal Affairs may reframe allegations of complaints received from IPR based on investigative need following the procedures in Police Bureau Directives 330.00 and 332.00.
- 7) IPR will monitor all administrative investigations conducted by Internal Affairs, other designated Police Bureau divisions, or BHR, as authorized in City Code 3.21.070(D) and Protocol 5.26 (Monitoring and Review of Police Bureau Investigations).

C. Notifications

- 1) When IPR receives a complaint, IPR is responsible for providing each complainant and the involved member with a tracking number and informing each complainant of the allegation classification and assignment.
- 2) When Internal Affairs opens a complaint, Internal Affairs shall notify each complainant and the involved member of the allegation classification and assignment upon designating a case number. Internal Affairs shall forward a copy of the notice to IPR.
- 3) The information provided to the involved member shall be sufficient to reasonably apprise them of the nature of the allegation(s) in the complaint.
- 4) These notifications may be delayed in cases of criminal misconduct or where notification may compromise the integrity of an investigation.
- 5) If any changes in the findings occur as a result of proceedings relating to the collective bargaining agreement between the City and the labor organizations that represent sworn members of the Police Bureau, or as a result of administrative or judicial review, Internal Affairs will notify IPR to follow up with the complainant as permitted by law.

D. Mediation

- 1) IPR will provide all complainants with information about the option to mediate their complaint as prescribed in Protocol 5.09, provided the complaint does not concern allegations of excessive force or criminal conduct by a member.

E. Administrative Closure

- 1) Except for allegations of excessive force, IPR may administratively close an investigation, after a sufficient inquiry, based on its authority under City Code 3.21.120 (C)(4) and Protocol 5.19 (IPR Case Handling Guidelines). The Director may refer the complaint to the appropriate Police Bureau Manager for an informal debriefing. The Director is authorized to close a complaint for the following reasons:

- a) No Misconduct: The employee's conduct, as alleged by the complainant, does not violate Bureau policy.
- b) Trivial or *De Minimis* Rules Violation: 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 Supervisory Investigation.
- c) No Jurisdiction: The complaint is against a non-employee, a former employee, or an employee of another department or other agency; or the employee resigns, retires, or shall no longer be employed by the Bureau by the time an investigation and disciplinary process should be completed. Even if IPR lacks jurisdiction, the Director may decide to investigate a complaint based on the nature and seriousness of the allegations, or refer the matter to the Bureau for an investigation. IPR or Internal Affairs may also conduct an investigation based on a request from an outside law enforcement agency. For example, if serious misconduct has been alleged, the Director or Internal Affairs Captain may order an investigation so that the findings will be placed in the employee's personnel or Internal Affairs file, forward the findings to another agency, review the actions of the employee's supervisors, or recommend a review of Bureau training or policies. Discipline may also be imposed if the employee returns to service.
- d) Judicial Review: If it is likely that the investigation would focus on the action of a complainant, such as an allegation that the complainant was improperly cited for a traffic infraction. Such cases are better addressed through legal proceedings where a court could place witnesses under oath, take live testimony, and render a decision.
- e) Unidentifiable Employee: A documented, reasonable investigative effort was not able to identify the involved member.
- f) Previously Investigated or Adjudicated: The alleged conduct was previously investigated or adjudicated by the Bureau and the current complaint does not provide substantially new evidence or allegations.
- g) Lacks Investigative Merit: The Director must articulate specific reasons why the complaint is not credible or reliable.
- h) Filing Delay: The complainant delayed too long in filing the complaint to justify present investigation. Complaints alleging significant misconduct will not be administratively closed due to a delay in filing.

In all cases in which an investigation is administratively closed, IPR will prepare an explanation so the complainant can be advised. If the investigation is administratively closed because the involved officer is an employee of a different agency, IPR will refer the complainant to that agency.

F. Criminal Complaints

- 1) Allegations of misconduct that include a claim of violation of criminal law will be subject to concurrent criminal and administrative investigations as prescribed in Directive 333.00 (Criminal Investigation of Police Bureau Employees).
 - a) IPR staff members aware of possible criminal misconduct by a member will notify the Director immediately. The Director will then notify the Internal Affairs Captain

and the Detectives Division Commander, who shall coordinate with the Assistant Chief of Investigations, in accordance with Directive 333.00, Criminal Investigations of Police Bureau Employees.

- b) During an administrative investigation of a member who also is subject to criminal investigation, no IPR staff member or the Auditor will disseminate or divulge information learned during the administrative investigation to any person other than designated members of Internal Affairs and IPR staff.

G. Unlawful Employment Practices, Discrimination Complaints, Equal Employment Opportunity

- 1) Complaints by members alleging unlawful employment practices shall be processed according to the Human Resources Administrative Rule 2.02 (Prohibition against Workplace Harassment, Discrimination, Retaliation) and Directive 310.20 (Discrimination, Harassment and Retaliation Prohibited).

H. Performance Deficiencies

- 1) An investigation of work place deficiency is generally conducted at the direction of a Police Bureau Manager as prescribed in Directive 334.00 (Performance Deficiencies). Internal Affairs will provide the Director a copy of the investigative report, including recommended findings, and the Police Bureau Manager's findings. The Director may request that the Manager conduct additional investigation, refer to Internal Affairs for additional investigation, or conduct an IPR investigation. If the Director disagrees with the Police Bureau manager's finding, the Director may request review of the case by the Police Review Board as authorized in City Code 3.21.120 (F).

I. Disposition Notice

- 1) If the complainant is a community member, Internal Affairs shall write a disposition letter. The letter shall explain the investigation and findings or administrative closure. Internal Affairs shall provide the letter to IPR within seven days of completion of the Police Review Board for IPR's use to notify the complainant. As part of the notification, IPR will also provide the complainant a notice of their ability to file a request for review by the Citizen Review Committee as prescribed in City Code 3.21.140.

J. Liability Management

- 1) If an officer's use of force gives rise to a finding of liability in a civil trial, IPR shall determine whether the allegation of misconduct has been previously subject to administrative investigation concluding in a finding:
 - a) if no investigation has previously been conducted based upon the same allegation of misconduct and reached an administrative finding, conduct a full investigation with the civil trial finding creating a presumption that the force used also violated PPB policy. The presumption can only be overcome by preponderance of specific, credible evidence;

- b) if an investigation has already concluded based upon the same allegation of misconduct and failed to reach a sustained finding, identify whether any new evidence exists in the record of the civil trial to justify the reopening of the administrative investigation, and if so, reinstate an investigation; and
- c) if an investigation has already concluded based upon the same allegation of misconduct and failed to reach a sustained finding, and no new evidence from the civil trial justifies reopening the investigation, work with Internal Affairs to identify the reason why the administrative finding was contrary to the civil trial finding and publish a summary of the results of the inquiry.