



California Exposition and State Fair Police Department

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DEPARTMENT GENERAL ORDER

Order № 300.100
01/2019 (Revised)
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PERSONNEL COMPLAINTS AND INVESTIGATIONS

300.001 PURPOSE

- A. This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the members of the California Exposition & State Fair Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

300.002 DEFINITIONS

- A. Personnel complaints consist of any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state or local law. All complaints received by Department personnel shall be forwarded to the Chief of Police for further investigation. The Chief of Police will determine and assign an appropriate investigator depending on the severity and complexity of the complaint. Inquiries about employee conduct which, even if true, would not qualify as a personnel complaint may be handled informally by a department supervisor and shall not be considered a complaint, but rather as a "Service Complaint." Service Complaints should also be documented by the supervisor receiving the complaint and forwarded to the Chief of Police for evaluation.
- B. This policy shall not apply to any interrogation, counseling instruction, informal verbal admonishment or other routine or unplanned contact of an employee in the normal course of duty, by a supervisor or any other employee, nor shall this policy apply to an investigation concerned solely and directly with alleged criminal activities (Cal. Govt. Code 3303(i)).
- C. Personnel Complaints shall be classified in one of the following categories:
1. **Service Complaint** - Complaints that pertain to departmental policies, procedures or practices that the complainant believes are inappropriate. In these types of complaints, the employee properly applied the policies or procedures but the complaint pertains to the policy/procedure applied.

*The mission of the California Exposition & State Fair Police is to:
Provide for the safety and security of visitors, employees, and stakeholders; keep order and
preserve the peace; and support the economic well-being of the California Exposition & State Fair.*

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2. **Informal Complaints** - A matter in which the complaining party is satisfied that appropriate action has been taken by a department supervisor of rank greater than the accused employee. Informal complaints need not be documented on a personnel complaint form and the responsible supervisor shall have the discretion to handle the complaint in any manner consistent with this policy.
3. **Formal Complaints** - A matter in which the complaining party requests further investigation, or which a department supervisor determines that further action is warranted. Such complaints may be investigated by a department supervisor of rank greater than the accused employee or referred to the Chief of Police, depending on the seriousness and complexity of the investigation.
4. **Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Chief of Police, such matters need not be documented as personnel complaints but may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.
5. **Miscellaneous** - A matter in which, based upon a supervisor's review, a complaint cannot be attributed to any individual officer due to the nature of the complaint or the circumstances presented by the complainant. This also includes known frivolous complaints. The purpose of this category is to ensure that officers are not subjected to unwarranted internal affairs investigations as a subject officer.

300.003 POLICY

- A. The California Exposition & State Fair Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.
- B. The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state or local law, and the requirements of any collective bargaining agreements. It is also the policy of this department to ensure that citizens can report misconduct without concern for reprisal or retaliation.

300.004 COMPLAINT DOCUMENTATION

- A. Formal complaints of alleged misconduct shall be documented by a supervisor in memorandum format directed to the Chief of Police. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible within the contents of the memorandum. The Chief of Police will be notified of all formal complaints against the department or department employees as soon as practicable.
- B. When a Personnel Complaint form is completed in person, the complainant should legibly write a detailed narrative of their complaint. If circumstances indicate that this is not feasible, the complaint may be dictated to the receiving supervisor. In an effort to ensure accuracy in any complaint, it is recommended that a recorded statement be obtained from the reporting party. A refusal by a party to be recorded shall not alone be grounds to refuse to accept a complaint.

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Whether handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement. The complainant should be provided with a copy of his/her own original complaint per Penal Code§ 832.7.

300.005 ANNUAL SUMMARIES

- A. The California Exposition & State Fair Police Department compiles annual statistical summaries, based upon records of personnel complaints and internal affairs investigations, which are made available to the public and department employees. The statistical data is maintained and annual reports submitted to the California Department of Justice.

300.060 CORRESPONDENCE WITH COMPLAINANTS

- A. The Chief of Police should maintain a process of notifying complainants when an investigation is initiated, the status of an investigation, if protracted, and notification of disposition as required and allowed by law.

300.007 PROCEDURES

- A. **Assignment** - All complaints received by Department personnel shall be forwarded by a supervisor to the Chief of Police for further review and disposition. The Chief of Police will determine if the complaint should be formally investigated or handled administratively. If the complaint is to be formally investigated, the Chief of Police will assign an investigator depending upon the severity and complexity of the complaint.
- B. **Role of the Investigator** - The role of the investigator in any internal affairs investigation is to be a fact finder. The investigator will interview involved parties, collect evidence, and report the facts. It is not the role of the investigator to draw conclusions or recommend findings or dispositions.
- C. **Notification** - An employee who is the subject of a formal complaint investigation will be notified of the pending investigation as soon as practical unless such notification jeopardizes the investigation. The notification will be made in writing, usually by the Chief of Police, and will usually include the following information: name of the investigator; name of the complainant; date of the incident; location of the incident; and a general description of the allegation.

D. Types of Investigations

- 1. **Administrative Investigations** - These investigations focus on alleged violations of department General Orders. For the integrity of the process, it is important that information from the administrative investigation of a personnel complaint not be disclosed in a criminal investigation, if there is one. Administrative investigations should comply with requirements set forth in Government Code 3300, et seq. (The Peace Officers Bill of Rights); current legal precedent; and applicable inter-agency protocols, such as involving officer-involved fatal incidents.

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2. **Criminal Investigations** - These investigations generally have priority over administrative investigations. Once the criminal investigation is completed, it may be incorporated into the administrative investigation, which can then proceed. In a criminal investigation, the employee has all the criminal rights provided for by law, but any additional rights provided by the Peace Officers Bill of Rights do not apply.

300.008 SUSTAINED / SUBSTANTIATED COMPLAINTS

- A. **Personnel Complaints** - The Chief of Police will determine the dispositions on all sustained rule violations. The intent of these dispositions is to remedy or modify actions or policies/procedures/practices and to ensure that they do not reoccur. In determining the dispositions for personnel investigations, the Chief of Police can consider employee performance ratings, prior personnel complaints, and other relevant information so long as the information is provided to the employee.
- B. **Service Complaints** - The only disposition to remedy policies/procedures/practices on substantiated complaints is:
 1. **Modification of Policy** -the policy/procedure/practice will be changed.

300.009 RETENTION

- A. The California Exposition & State Fair Police Department will maintain records of all complaints against the department or employees. Personnel Complaints and subsequent Investigations will be maintained by the Chief of Police. Complaint investigations will be purged as prescribed by California State Law.
- B. **Service Complaints** -Service complaint investigations, findings, and dispositions are retained in a separate file for three years.
- C. **External Personnel Complaints** - Penal Code § 832.5(b) establishes a five-year retention period for personnel complaint investigations and states, "Complaints and any reports or findings relating thereto shall be retained for a period of at least five years." This five year retention includes any record of discipline that was imposed as a result of sustained complaints. These records are retained in the employee's personnel file.
- D. Penal Code §§ 832.5(c) and 832.5(d) direct that investigations of external complaints that have been determined to be frivolous, unfounded or exonerated shall not be maintained in the employee's general personnel file. Rather these complaints shall be retained in other files that shall be deemed personnel records for purposes of the California Public Records Act and Evidence Code § 1043. These complaints and investigations are still subject to discovery and possible disclosure pursuant to a Pitchess Motion.
- E. **Internal Personnel Complaints** - Internal personnel complaint investigations and records of imposed discipline are generally retained for five years. The Chief of Police reserves the right, based on additional complaints or information, to retain these records for a longer period of time.

300.010 PERSONNEL COMPLAINTS

- A. Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.
- B. Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

300.011 COMPLAINT CLASSIFICATIONS

- A. Personnel complaints shall be classified in one of the following categories:
 - 1. **Informal** - A matter in which the Chief of Police is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.
 - 2. **Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Chief of Police, depending on the seriousness and complexity of the investigation.
 - 3. **Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Chief of Police, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.
 - 4. **Service Complaint** - Complaints that pertain to established department policies, procedures or practices that the complainant believes are inappropriate. In these types of complaints, the employee properly applied the policies or procedures but the complaint pertains to the policy or procedure applied.
 - 5. **Miscellaneous** - A matter in which, based upon a supervisor's review, a complaint cannot be attributed to any individual officer due to the nature of the complaint or the circumstances presented by the complainant. This also includes known frivolous complaints.

300.012 SOURCES OF COMPLAINTS

- A. The following applies to the source of complaints:
 - 1. Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
 - 2. Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.

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3. Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
4. Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
5. Tort claims and lawsuits may generate a personnel complaint.

300.013 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

- A. Personnel complaint forms will be available at the police department. Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

300.014 ACCEPTANCE

- A. All complaints will be courteously accepted by any member and promptly forwarded to the Chief of Police. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a memorandum to the Chief of Police.
- B. Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary. If requested, a complainant shall be provided with a copy of their statement at the time it is filed with the Department (Penal Code § 832.7).

300.015 AVAILABILITY OF WRITTEN PROCEDURES

- A. The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

300.016 DOCUMENTATION

- A. Supervisors shall ensure that all formal and informal complaints are documented and forwarded to the Chief of Police. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

300.017 ADMINISTRATIVE INVESTIGATIONS

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the Chief of Police. Allegations of misconduct will be administratively investigated as follows:

SUPERVISOR RESPONSIBILITIES

1. A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.
2. The responsibilities of supervisors include, but are not limited to:
 - a. Ensure that upon receiving or initiating any formal complaint, a complaint form is completed by the citizen and/or a memorandum to the Chief of Police is written and submitted.
 - b. Respond to all complaints in a courteous and professional manner.
 - c. Resolve those personnel complaints that can be resolved immediately.
 - d. Make follow-up contact with the complainant within 24 hours of the Department receiving the complaint.
 - e. Document the resolution, in a memorandum, and forward to the Chief of Police on a matter is resolved and no further action is required.
 - f. Ensure that upon receipt of a complaint involving allegations of a potentially serious nature, the Chief of Police is notified as soon as practicable.
 - g. Promptly notify the Personnel Manager and California Exposition and State Fair's Executive Team for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
 - h. Forward unresolved personnel complaints to the Chief of Police, who will determine whether to contact the complainant or assign the complaint for investigation.
 - i. Inform the complainant of the investigator's name and the complaint number within three days after assignment.
 - j. Investigate a complaint as follows:
 - i. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - ii. When appropriate, ensure immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
 - iii. Ensure that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
 - iv. Ensure interviews of the complainant are generally conducted during reasonable hours.

300.018 ADMINISTRATIVE INVESTIGATION FORMAT

Department investigators conducting personnel and/or internal affairs investigation should use the most current edition of the California Peace Officer's Associations (CPOA) "*Internal Affairs Investigation Manual*" as a guideline.

300.019 DISPOSITIONS

A. Each personnel complaint shall be classified with one of the following dispositions:

1. **Unfounded** - When the investigation discloses that the alleged act did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

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2. **Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.
3. **Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.
4. **Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.
5. If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

300.020 COMPLETION OF INVESTIGATIONS

- A. Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).
- B. In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

300.021 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

- A. The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

300.022 ADMINISTRATIVE SEARCHES

- A. Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon reasonable suspicion of misconduct. Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other documents or equipment.
- B. Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code section 3309).

300.023 DISCLOSURE OF FINANCIAL INFORMATION

- A. An employee may be compelled to disclose personal financial information under the following circumstances (Government Code section 3308):

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1. Pursuant to a state law or proper legal process.
2. Information exists that tends to indicate a conflict of interest with official duties.
3. If the employee is assigned or being considered for a special assignment with a potential for bribes or other improper inducements

300.024 ADMINISTRATIVE LEAVE

- A. When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:
1. May be required to relinquish any department badge, identification, assigned weapon and any other department equipment.
 2. Shall be required to continue to comply with all policies and lawful orders of a supervisor.
 3. May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

300.025 CRIMINAL INVESTIGATION

- A. Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.
- B. The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.
- C. A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.
- D. The California Exposition & State Fair Police Department may release information concerning the arrest or detention of any member, including an officer, which has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

300.026 POST ADMINISTRATIVE INVESTIGATION PROCEDURES

- A. Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police.

300.027 CHIEF OF POLICE RESPONSIBILITIES

- A. The Chief of Police shall review the investigation and make a determination of disposition. If the disposition results in a recommendation for disciplinary action, the Chief of Police will consult with the California Exposition and State Fair's Administration and Personnel Manager for disciplinary action. In the event disciplinary action is proposed, the Personnel Manager shall provide the member with a pre-disciplinary, procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Personnel Manager shall also provide the member with:
1. Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
 2. An opportunity to respond orally or in writing to the Personnel Manager within five days of receiving the notice.
 3. Upon a showing of good cause by the member, the Personnel Manager may grant a reasonable extension of time for the member to respond.
 4. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.
- B. Once the member has completed their response or if the member has elected to waive any such response, the Personnel Manager shall consider all information received in regard to the recommended discipline. The Personnel Manager shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Personnel Manager has issued a written decision, the discipline shall become effective.

300.028 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

- A. The Chief of Police, or authorized designee, shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint [Penal Code § 832.7(e)].

300.029 NOTICE REQUIREMENTS

- A. The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed [Penal Code § 832.7(e)].

300.030 PRE-DISCIPLINE EMPLOYEE RESPONSE

- A. The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Personnel Manager after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:
1. The response is not intended to be an adversarial or formal hearing.
 2. Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
 3. The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
 4. In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
 5. The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

300.031 RESIGNATIONS / RETIREMENTS PRIOR TO DISCIPLINE

- A. In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file (Toby Decision).

300.032 POST-DISCIPLINE APPEAL RIGHTS

- A. Non-probationary employees have the right to appeal a: suspension without pay; punitive transfer; demotion; reduction in pay or step; or termination from employment. The employee has the right to appeal using the procedures established by their respective collective bargaining agreement, Memorandum of Understanding, and/or personnel rules.
- B. In the event of punitive action against an employee covered by the Peace Officer Bill of Rights (POBR), the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.
- C. During any administrative appeal, evidence that an officer has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

300.033 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

- A. At-will and probationary employees, and those members other than non-probationary employees, may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the Peace Officer Bill of Rights (POBR) (Government Code §§ 3303, 3304.)

- B. At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

300.034 RETENTION OF PERSONNEL INVESTIGATION FILES

- A. Pursuant to Penal Code § 832.5(b), all personnel complaints shall be retained for five (5) years, or longer in accordance with California Human Resources retention policies.