

## Personnel Complaints

### 910.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Redding 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.

### 910.2 POLICY

The Redding Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this Department to ensure that the community can report misconduct without concern for reprisal or retaliation.

The investigation of alleged misconduct shall be considered confidential and release of any portion of an investigation shall not be made without the prior approval of the Chief of Police.

### 910.3 PERSONNEL COMPLAINTS

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.

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.

#### 910.3.1 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any Department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.

# Redding Police Department

## RPD Policy Manual

### *Personnel Complaints*

---

- (e) Tort claims and lawsuits may generate a personnel complaint.

#### **910.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

##### **910.4.1 COMPLAINT FORMS**

Personnel Complaint and Procedure Report forms will be available at the front counter of the Redding Police Department Records Unit and be accessible through the Department website.

##### **910.4.2 ACCEPTANCE**

All complaints will be courteously accepted by any Department member and promptly given to the appropriate supervisor. Complaints received during business hours shall be referred to the employees' Watch Commander. In their absence, the on-duty supervisor shall receive the complaint and notify their concerned Watch Commander as soon as practical. If the complaint is of sufficient gravity, the supervisor shall notify their appropriate Watch Commander, shall be notified regardless of the hour.

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 Watch Commander, or supervisor in their absence. If a Watch Commander/supervisor are not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the Watch Commander/supervisor to contact the complainant. The Watch Commander/supervisor, upon contact with the complainant, should determine the severity of the complaint. If the complainant requests a formal complaint, the Watch Commander/supervisor shall complete and submit a Personnel Complaint and Procedures Report form to the Division Commander via chain of command.

If the complainant alleges injuries were caused by an employee's actions, a medical release form should be obtained.

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.

A complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7).

##### **910.4.3 AVAILABILITY OF WRITTEN PROCEDURES**

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

#### **910.5 DOCUMENTATION**

Watch Commanders shall ensure that all formal complaints are documented on a Personnel Complaint and Procedures Report form. The Watch Commander shall ensure that the nature of the complaint is defined as clearly as possible.

# Redding Police Department

## RPD Policy Manual

### *Personnel Complaints*

---

All formal complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. This log will be kept in the Professional Standards Unit.

#### **910.6 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

##### **910.6.1 SUPERVISOR RESPONSIBILITIES**

In general, the initial responsibility for the investigation of a personnel complaint shall rest with the member's immediate Watch Commander, if available. In their absence, the supervisor may assume the initial responsibility. If the Watch Commander/supervisor is the complainant, or has any personal involvement regarding the alleged misconduct, the initial responsibility should not be conducted by this person. The Division Commander may direct that another supervisor investigate any complaint.

The responsibilities of the Watch Commander and/or supervisor include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a Personnel Complaint and Procedures Report form is completed.
  - (a) The original complaint form will be directed to the Division Commander of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  - (b) In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a Watch Commander and/or supervisor may orally report the matter to the member's Division Commander or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complainants in a professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately. Personnel complaints may be resolved by a supervisor talking with the complainant and do not raise the the level of a formal, written complaint.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Division Commander is notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Division Commander for direction regarding addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Watch Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of their name, contact information, and the complaint number, if available.

# Redding Police Department

## RPD Policy Manual

### Personnel Complaints

---

- (h) Investigating a complaint as follows:
  - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

#### 910.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor, Watch Commander, or a member of the Professional Standards Unit, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Redding Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
  - 1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
  - 2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

# Redding Police Department

## RPD Policy Manual

### Personnel Complaints

---

- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

#### 910.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

The Internal Affairs Investigation shall summarize the pertinent facts including:

- (a) A summary of the complaint or alleged act of misconduct.
- (b) Pertinent portions of the statements of all parties to the incident, using Department Personnel Complaint and Procedures Report for the initial complaint reporting.
- (c) A description of the incident and evidence important to the case.
- (d) The observations and conclusions of the investigating officer.

#### 910.6.4 DISPOSITIONS

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

**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve Department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

**Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

**Sustained** - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal

# Redding Police Department

## RPD Policy Manual

### *Personnel Complaints*

---

pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or Department policy (Penal Code § 832.8).

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.

#### **910.6.5 COMPLETION OF INVESTIGATIONS**

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).

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.

#### **910.7 ADMINISTRATIVE SEARCHES**

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a 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 document or equipment.

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 § 3309).

##### **910.7.1 DISCLOSURE OF FINANCIAL INFORMATION**

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

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

#### **910.8 ADMINISTRATIVE LEAVE**

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:

- (a) May be required to relinquish any Department badge, identification, assigned weapons and any other Department equipment.

# Redding Police Department

## RPD Policy Manual

### *Personnel Complaints*

---

- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) 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.

#### **910.9 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor, investigator, or outside law enforcement agency shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

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.

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.

The Redding Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

#### **910.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

##### **910.10.1 DIVISION COMMANDER RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Division Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Division Commander shall make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Division Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

# Redding Police Department

## RPD Policy Manual

### *Personnel Complaints*

---

#### 910.10.2 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall approve or reject the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Division Commander 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 Division Commander shall also provide the member with:

- (a) Access to all of the materials considered by the Division Commander in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
  1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
  2. 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.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police 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 Chief of Police has issued a written decision, the discipline shall become effective.

#### 910.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the 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(f)).

#### 910.10.4 NOTICE REQUIREMENTS

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(f)).

#### **910.11 PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review

# Redding Police Department

## RPD Policy Manual

### *Personnel Complaints*

---

the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.

#### **910.12 POST-DISCIPLINE APPEAL RIGHTS**

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 any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

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).

#### **910.13 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

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 POBR (Government Code § 3303; Government Code § 3304).

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

# Redding Police Department

## RPD Policy Manual

### *Personnel Complaints*

---

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.

#### **910.14 PERSONNEL INVESTIGATION FILES**

Government Code Section 3303(g) states, in part, "The public safety officer shall be entitled to a transcribed copy of...any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential." Pursuant to 3303(g), the Department will provide the accused officer all copies of materials upon which the action is based prior to disciplinary action.

Routing and maintenance of completed investigations of complaints against Department employees:

- (a) **Divisional File:** Will be maintained within the division where the employee is assigned. The documentation contained in this file will be used by supervisors to assist them in completing annual personnel evaluations (PER). Both positive and negative documentation on employee performance will be maintained in this file. Positive performance documentation will be referenced in the PER and discarded after the PER is approved and sent to the Personnel Department at City Hall. Negative documentation maintained in this file will be limited to memoranda describing oral counseling. Negative documentation may be referenced in the PER. Documents used to support a below standards rating in one or more performance area will be retained in the Divisional file and be used for documentation on the PER. No documentation will be held in this file for more than one year (unless personnel or legal proceedings are pending).
- (b) **Traffic Accident:** Traffic Accident Review Board (TARB) files will be maintained in the Administration Division and contain documents as outlined per policy. These files will contain TARBs where the employee was found not at fault or was at fault and receives a memoranda describing an oral counseling or training as a remedy. These files will be purged after five years. TARBs which result in a sworn officer receiving formal discipline will be maintained in the Internal Affairs file for sworn officers. For non-sworn employees, TARBs which result in a non-sworn employee receiving formal discipline will be placed in their permanent personnel file at City Hall.
- (c) **Internal Affairs:** Internal Affairs Files (IA) will be maintained in the Administration Division. They will contain formal complaints of misconduct and the accompanying completed investigations, along with any documentation where the punishment is a written reprimand or more severe. Internal Affairs files will be maintained as outlined in Policy 913.6. Investigations of formal complaints of misconduct against non-sworn employees will be maintained in the Administrative Division. Any investigation resulting in discipline of a non-sworn employee will be forwarded to the City Personnel Department to be placed in their permanent personnel file at City Hall.