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OAKLAND

2015 JUL -2 PM 12:13

## AGENDA REPORT

**TO:** Sabrina B. Landreth  
CITY ADMINISTRATOR

**FROM:** Sean Whent

**SUBJECT:** Informational Report Re: Request of  
100 Black Men of the Bay Area, Inc. –  
Concealing or Suppressing Investigations  
into Police Officer Misconduct

**DATE:** June 26, 2015

City Administrator  
Approval

Date

7/1/15

**COUNCIL DISTRICT:** City-Wide

### RECOMMENDATION

Staff recommends that the Public Safety Committee accept:

An Informational Report from the Oakland Police Department (OPD) in Response to a Rules Request from 100 Black Men of the Bay Area (Frank Tucker) Concerning the Perceived Widespread Custom or Practice of Concealing or Suppressing Investigations into Police Officer Misconduct.

### OUTCOME

This report will help facilitate discussion between the Oakland Police Department and the Public Safety Committee regarding a Rules request from 100 Black Men of the Bay Area (Frank Tucker) concerning the perceived widespread custom or practice of concealing or suppressing investigations into police officer misconduct.

### BACKGROUND / LEGISLATIVE HISTORY

At the April 16, 2015 Rules and Legislation Committee, the Committee approved for scheduling the 100 Black Men of the Bay Area Inc.'s (100 Black Men) request for a council report. The City Administrator assigned many of the 100 Black Men requests to the Oakland Police Department (OPD) for further response. This report is responsive to the third request, which is to receive an informational report and possible action adopting legislation to eradicate the perceived "widespread custom or practice of concealing or suppressing investigations into police officer misconduct. In order for the public to be safe we must break down the 'Blue Wall Code of Silence' that exists in law enforcement agencies throughout this nation. Good officers must understand they cannot defend bad officers or their misconduct."

Item: \_\_\_\_\_  
Public Safety Committee  
July 14, 2015

## ANALYSIS

As a matter of policy and practice, OPD personnel are prohibited from concealing or suppressing investigations into officer misconduct. Training Bulletin V-T.3 (Reporting Misconduct, enacted 2006) states:

***Reporting misconduct is not an act of betrayal, it is an act of integrity.***

Department personnel have a responsibility to adhere to agency standards of conduct, policies, rules, and procedures. Failure to do so threatens the integrity and ethics of our profession. We all must be held accountable for tolerating and participating in the so-called “code of silence” (principle of placing loyalty to fellow members/employees above reporting misconduct). Personnel are required to take action when they witness or learn of behavior that violates the Department’s standards of conduct. This does not mean that every misstep, mistake, or instance of poor judgment must be reported to a supervisor. Such zealotry could cause more harm than good. However, it does mean that personnel must draw the line when an act or pattern of behavior by other personnel threatens the rights of citizens and/or the well-being and reputation of Department personnel and the Department.

Each member and employee of the Department is a stakeholder in the effort to preserve and enhance the reputation of the Department and their personal pride as members and employees of the law enforcement profession. Personnel cannot subscribe to the notion that silence and secrecy will serve their individual or collective interests. Experience has clearly demonstrated that these attitudes only serve to build barriers within the Department and alienate members, employees, supervisors, and managers from one another and the public. Unfortunately, the mistakes and misdeeds of a few often have serious repercussions for everyone.

A high regard for integrity and personal accountability must be emphasized to ensure the development and maintenance of a professional organizational image. We must all be ever vigilant to demonstrate that our behavior reflects the professional standards of conduct in the Law Enforcement Code of Ethics.

Training Bulletin V-T.3 is included in its entirety as ***Attachment A***.

OPD's Manual of Rules (MOR) section 314.48: Reporting Violations of Laws, Ordinances, Rules or Orders is included in Training Bulletin V-T.3. This MOR section states:

Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, which rise to the level of a Class I violation or a Class II violation which indicate a pattern of misconduct or a single Class II violation which threatens the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department, shall within 24 hours or sooner if practical, report the offense, orally or in writing, to his/her supervisor.

Members and employees who know of actions or behavior of other members or employees, which are considered Class II violations and do not indicate a pattern of misconduct and do not threaten the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department, may address the misconduct through non-disciplinary corrective action.

If the witness member or employee believes the incident is so grave and serious that it must be reported immediately to the Chief of Police, the chain of command may be bypassed. Severe discipline shall be imposed, up to and including termination, for failure to comply with these reporting requirements.

OPD conforms to state and federal law concerning the release of the contents of investigations into officer misconduct. OPD Training Bulletin V-T.1 (Internal Investigation Procedure Manual, enacted 2008) states in section J (Investigation Integrity and Confidentiality):

The contents of internal investigations are confidential by law. In state actions, the requesting authority must file a *Pitchess* motion with the court showing good cause for the release of personnel records.<sup>1</sup> At the request of the Office of the City Attorney, the court will conduct an in-camera review of the documents requested to determine what, if any, documents shall be disclosed. In federal matters, the requesting authority must submit a *Henthorn* motion establishing good cause for the disclosure of records.<sup>2</sup> The *Henthorn* process is akin to the *Pitchess* procedure referenced above.

Training Bulletin V-T.1 is included in its entirety as ***Attachment B***.

<sup>1</sup> *Pitchess v. Superior Court* 11 Cal.3d 531, 537, 538, 113 Cal.Rptr.897 Provides when a criminal defendant seeks information from a peace officer's personnel records concerning prior complaints, a motion showing good cause i.e., a plausible factual justification for disclosure must be submitted to the court.

<sup>2</sup> *US v. Henthorn* 931 F.2d 29 (2001) The Ninth Circuit held that government has a duty to make a pretrial examination of the personnel files of testifying law enforcement officers for Brady material (any evidence the government finds that tends to establish the innocence of the accused).

The OPD Manual of Rules provides a means for OPD members and employees to report police misconduct confidentially. Section 175.35, Confidential Reporting of Police Misconduct, states:

Any member or employee of the Department may confidentially report potential police misconduct directly to the commander of the Internal Affairs Division (IAD). The member or employee reporting the alleged misconduct shall clearly indicate to the IAD commander that confidentiality for the report is sought pursuant to this confidential provision. Confidential reports may be made in person, by telephone or in writing. Confidential reports will be documented by the IAD commander and kept in a secure repository, accessible only to the IAD commander. The case shall be investigated without disclosure of the complainant's name unless and until such disclosure is required by law.

In short, OPD values good officers and has a department-wide atmosphere and policy that put honesty and integrity first in order to maintain public trust. These policies show that the Department does not encourage police officers to keep quiet about injustice even if the unjust person is a friend. Those officers who would otherwise hesitate to report misconduct due to a fear or a sense of loyalty may report such misconduct confidentially.

OPD has a myriad of effective controls in place to ensure that officer misconduct is not concealed. The Department is doing everything it can to ensure this in spite of the constraints provided by state and federal oversight of employee privacy in this area.

### **PUBLIC OUTREACH/INTEREST**

This is of public interest as it directly relates to safety within the Oakland community.

### **COORDINATION**

The Office of the City Attorney was consulted in preparation of this report.

### **COST SUMMARY/IMPLICATIONS**

There are no costs associated with this report.

### **SUSTAINABLE OPPORTUNITIES**

*Economic:* There are no economic opportunities identified in this report.

*Environmental:* No environmental opportunities have been identified.

Sabrina B. Landreth, City Administrator

Subject: Informational Report for 100 Black Men of the Bay Area –  
Concealing or Suppressing Investigations into Police Officer Misconduct

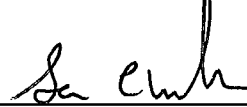
Date: June 26, 2015

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***Social Equity:*** This report provides valuable information to the Oakland community regarding social equity through transparent, fair, and impartial policing.

For questions regarding this report, please contact Police Services Manager Timothy Birch, Research and Planning, at (510) 238-6443.

Respectfully submitted,



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Sean Whent  
Chief of Police  
Oakland Police Department

Prepared by:  
Timothy Birch  
Police Services Manager I  
Research and Planning  
Office of the Chief  
Oakland Police Department

***Attachment A:*** Training Bulletin V-T.3 Reporting Misconduct

***Attachment B:*** Training Bulletin V-T.1 Internal Investigation Procedure Manual

Item: \_\_\_\_\_  
Public Safety Committee  
July 14, 2015



*"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."*

## REPORTING MISCONDUCT

### *Reporting misconduct is not an act of betrayal, it is an act of integrity.*

Department personnel have a responsibility to adhere to agency standards of conduct, policies, rules, and procedures. Failure to do so threatens the integrity and ethics of our profession. We all must be held accountable for tolerating and participating in the so-called "code of silence" (principle of placing loyalty to fellow members/employees above reporting misconduct). Personnel are required to take action when they witness or learn of behavior that violates the Department's standards of conduct. This does not mean that every misstep, mistake, or instance of poor judgment must be reported to a supervisor. Such zealotry could cause more harm than good. However, it does mean that personnel must draw the line when an act or pattern of behavior by other personnel threatens the rights of citizens and/or the well being and reputation of Department personnel and the Department.

Each member and employee of the Department is a stakeholder in the effort to preserve and enhance the reputation of the Department and their personal pride as members and employees of the law enforcement profession. Personnel cannot subscribe to the notion that silence and secrecy will serve their individual or collective interests. Experience has clearly demonstrated that these attitudes only serve to build barriers within the Department and alienate members, employees, supervisors, and managers from one another and the public. Unfortunately, the mistakes and misdeeds of a few often have serious repercussions for everyone.

A high regard for integrity and personal accountability must be emphasized to ensure the development and maintenance of a professional organizational image. We must all be ever vigilant to demonstrate that our behavior reflects the professional standards of conduct in the Law Enforcement Code of Ethics.

### **MOR 314.48 – Reporting Violations of Laws, Ordinances, Rules or Orders**

Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, which rise to the level of a Class I violation or a Class II violation which indicate a pattern of misconduct or a single Class II violation which threatens the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department, shall within 24 hours or sooner if practical, report the offense, orally or in writing, to his/her supervisor.

Members and employees who know of actions or behavior of other members or employees, which are considered Class II violations and do not indicate a pattern of misconduct and do not threaten the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department, may address the misconduct through non-disciplinary corrective action.

If the witness member or employee believes the incident is so grave and serious that it must be reported immediately to the Chief of Police, the chain of command may be bypassed. Severe discipline shall be imposed, up to and including termination, for failure to comply with these reporting requirements.



### Reporting Misconduct

When a member/employee observes misconduct, he/she shall take action. In most cases, observed misconduct shall be reported to the member's/employee's supervisor or directly to IAD. However, for certain Class II offenses, members/employees may use discretion, and if appropriate, address the misconduct directly with the member/employee committing the MOR violation, rather than reporting it to a superior or the Internal Affairs Division.

***NOTE: If a member/employee becomes aware that a private person (e.g. suspect, witness, etc.) wishes to make a complaint, then the officer shall notify his/her supervisor or commander.***

Types of misconduct that shall be reported when observed by Department Personnel (MOR 314.48):

- All Class I offenses; and
- Class II offenses that indicate a **pattern of misconduct OR a single Class II offense which threatens the rights of private persons and/or the well being and reputation of Departmental personnel and/or the Department.**

Types of Class II misconduct that may be addressed in a non-disciplinary manner by the observing member/employee and/or the member's/employee's supervisor, when he/she becomes aware of the misconduct (MOR 314.48):

- Class II offenses that DO NOT indicate a pattern of misconduct; and
- DO NOT threaten the rights of private persons; and/or
- the well-being and reputation of Departmental personnel; and/or
- the Department.

Supervisors may use discretion about initiating an administrative investigation when they are notified by another member/employee of a Class II offense(s) committed by a subordinate if there is no pattern of misconduct. The supervisor may choose to take non-disciplinary corrective action for infractions reported by members/employees where there is no pattern of misconduct and he/she believes this to be the best method for correcting the behavior.

If the supervisor believes the Class II offense(s) to be a pattern of misconduct he/she shall initiate an investigation.

Supervisors should always take immediate action to correct behavior even if they DO initiate an administrative investigation, unless such action would compromise an investigation.



### **Class I Offenses**

Class I offenses are the most serious allegations of misconduct and, if sustained, shall result in serious disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.

#### **Examples**

- a. Use of excessive force, unnecessary and/or unlawful force;
- b. Fabrication or destruction of evidence, including the planting of inculpatory evidence;
- c. Untruthfulness, including perjury;
- d. Knowingly and intentionally filing a false police report;
- e. Insubordination;
- f. Commission of a felony or serious misdemeanor (Examples of serious misdemeanors include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, violations of California Penal Code Section 12021(c) (1), and those crimes where bias is a motivating factor);
- g. Bias or harassment, actions of a retaliatory nature, or failure to take reasonable steps to prevent retaliation;
- h. Solicitation or acceptance of gifts or gratuities specified in the Manual or Rules;
- i. Use of position for personal gain;
- j. Knowingly or should have reasonably known that he/she made a false arrest or illegal detention;
- k. Failure to report others who commit any Class I offense or a single Class II offense that indicates a pattern of misconduct or threatens the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department;
- l. Failure to detect a pattern of misconduct;
- m. Failure of a supervisor/manager to properly supervise, and/or take corrective action for misconduct that he/she knew or reasonably should have known about;
- n. Failure to properly identify self, including refusing to provide name, deliberate concealment of a badge or name plate; and
- o. Obstructing the Internal Affairs investigation process.

**REQUIRED ACTION** – Observing member/employee shall report the misconduct to their supervisor within 24 hours or sooner, if practical, and can be reported directly to the IAD or the Chief of Police if the member/employee believes it to be necessary or appropriate.

#### **Scenario**

While interacting with a private person, a member makes a comment of a discriminatory nature, such as derogatory comments regarding age, race, gender, sexual orientation, or religion directed at the person. The observing member/employee must report the misconduct to their supervisor and/or directly to IAD.





**Class II Offenses:** Class II offenses shall include all minor misconduct offenses.

**Class II Offenses – Mandatory Reporting to a Supervisor Requirement**

**Examples**

- a. Pattern of rude conduct;
- b. Pattern of failing to stop at a red light while driving; and
- c. Intentional disregard for Departmental policies (e.g. an officer purposefully fails to fill out a stop data form.)

**REQUIRED ACTION** – Observing member/employee shall report the misconduct to their supervisor.

**Scenario demonstrating a mandatory reporting requirement to a supervisor**

Officer 1 observes officer 2 shout a profanity at a private person. Officer 1 shall report the misconduct to a supervisor.

The supervisor can either initiate an investigation or if there is no pattern of misconduct, choose to handle the conduct via non-disciplinary corrective measures. If the supervisor uses non-disciplinary corrective measures and the behavior continues, the supervisor shall initiate an investigation. All non-disciplinary corrective measures **must be documented**. Appropriate forms of documentation include a Letter of Discussion, Performance Deficiency Notice (PDN) and Performance Appraisal Form.

**Class II Offenses – Reporting Discretion allowed**

**Examples**

- a. One instance of using profanity not directed at a private person; and
- b. One instance of conducting personal business while on-duty.

**REQUIRED ACTION** – Observing member/employee shall either speak with the member/employee committing the misconduct or report the misconduct to their supervisor.

**Scenarios demonstrating optional reporting to a supervisor**

- 1. An officer uses profanity in the presence of other persons, but does not direct it towards anyone, and it is not a pattern of misconduct, the witness officer is not obligated to report it. However, the witness officer shall speak with the subject officer (peer correction) and advise him or her that such conduct is unprofessional and future misconduct may establish a pattern of misconduct which would trigger a mandatory reporting requirement.
- 2. Officer 1 observes officer 2 conducting personal business on-duty. Specifically, officer 2 has spent 30 minutes of on-duty time on his personal cellular phone to facilitate a loan application process. Officer 1 has not observed officer 2 behave this way in the past. This type of misconduct is not directed at a person and does not threaten the rights of private persons and/or the well-being and reputation of the Department. The witness officer shall speak with the subject officer (peer correction) as in scenario “1” above.



### **Formal Investigations vs. Non-Disciplinary Corrective Measures**

There are different ways in which misconduct by members/employees may be discovered and the action taken is dependent upon the severity of the allegation and the way in which it was discovered.

An internal investigation shall be initiated in the following situations:

- All allegations of misconduct reported by any private person;
- All allegations of Class I misconduct reported by OPD personnel;
- All allegations of Class II misconduct reported by OPD personnel, which indicate a pattern of misconduct.

### Informal Complaint Resolutions

The Informal Complaint Resolution process may be used to resolve allegations of Class II offenses from any source that DO NOT indicate a pattern of misconduct. (See DGO M-3.1 Informal Complaint Resolutions)

Non-disciplinary corrective action imposed by a supervisor may be used in the following situations:

- Class II offenses reported by OPD personnel that DO NOT indicate a pattern of misconduct.

When deciding the proper response to misconduct, remember that *some* action is *always* required. Misconduct in any form shall not be ignored. The purpose of this Training Bulletin is to simplify the discussion regarding what is the required response. Members and employees should reference this policy and related General Orders (M-3 series) to help determine the appropriate response.



17-101-08  
Tasks: 1, 5, 7, 8, 9, 10, 11, 12, 28, 29

Alpha Index: Internal Investigation Manual  
Internal Investigation Procedures

*"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."*

## PART III INTERNAL INVESTIGATION PROCEDURE MANUAL

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**REVISION RECORD**

The page numbering format has been revised to facilitate updating and tracking revisions to publications contained in this Handbook.

When a minor revision is made to a publication, the 'Revision Number' will be indicated on the Special Order and shall be accompanied by the updated page(s). The 'Revision Date' and 'Reference Page Number(s)' shall be recorded in the appropriate box on the same line as the indicated 'Revision Number'.

When it is necessary to make major policy or content revision, the publication shall be rewritten in its entirety. The 'Revision Number' and 'Revision Date' shall be indicated on the new order. The 'Revision Date' shall be recorded in the appropriate box on the same line as the indicated 'Revision Number'. The term 'NEW' shall be recorded in the 'Reference Page Number(s)' box to indicate the promulgation of a new order.

| Revision Number | Revision Date | Reference Page Number(s) | Revision Number | Revision Date | Reference Page Number(s) |
|-----------------|---------------|--------------------------|-----------------|---------------|--------------------------|
| 1               | 26 Jun 08     | NEW                      | 16              |               |                          |
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17 Jul 08

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Alpha Index: Internal Investigation Manual  
Internal Investigation Procedures

*"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."*

## INTERNAL INVESTIGATION PROCEDURES

The purpose of this Training Bulletin is to set forth Departmental policy and procedures to enable personnel to conduct an accurate, complete, and timely internal investigation. Additionally, Internal Affairs Division (IAD) investigators shall comply with the provisions of IAD Policy and Procedures 05-02, IAD Investigation Process.

### A. Complaints

1. Departmental General Order (DGO) M-3, COMPLAINTS AGAINST DEPARTMENTAL PERSONNEL OR PROCEDURES sets forth Departmental policy and procedures for the following:
  - a) Value statement;
  - b) Definitions;
  - c) Receiving complaints;
  - d) Processing complaints;
  - e) Due dates and timelines;
  - f) Investigation of complaints;
  - g) Review of investigations;
  - h) Due date extensions and requests;
  - i) General policy.
2. DGO M-3.1, INFORMAL COMPLAINT RESOLUTION PROCESS sets forth Departmental policy and procedures for initiating, administering, and reviewing the appropriateness and resolution of the Informal Complaint Resolution process to resolve service complaints or Class II violations that do not indicate a pattern of misconduct..
3. DGO M-3.2, CITIZENS' POLICE REVIEW BOARD, sets forth Departmental policy and procedures regarding investigations conducted by the Citizens' Police Review Board.

### B. Assignment of Investigations

The assignment of a complaint as an internal investigation or an Informal Complaint Resolution shall be performed in accordance with the provisions of DGO M-3 or DGO M-3.1.



C. Investigator Prohibition

An investigator shall recuse him/herself from conducting an internal investigation if he/she was directly involved in the incident or if any of the following conditions exist between any of the involved parties which might lead to a perception of bias, such as:

1. Family relationship;
2. Outside business relationship;
3. Romantic relationship;
4. Personal friendship; or
5. Close work relationship (to be determined on a case-by-case basis).

Personnel shall make full disclosure in a memorandum of any relationship which might lead to a perception of bias through his/her supervisor to the first-line commander.

The commander shall make a decision as to whether the perception is justified and reassign the investigation, if necessary. The commander shall memorialize the decision, in writing, on the memorandum. The memorandum shall be retained in the case file.

D. Case File Management

1. A Control and Investigative File shall initially contain the following:
  - a) A completed Complaint Form (TF-3039b).
  - b) Investigative files sent for division-level investigation shall include an IAD Administrative Memorandum containing instruction and advising of the due date.
  - c) Any offense reports and ancillary documents, when available.
  - d) A Chronological Activity Log (CAL), documenting all investigative steps and events that have been completed.
  - e) Miscellaneous documents related to the investigation or related issues.
  - f) An Envelope marked "CONFIDENTIAL – DO NOT COPY" utilized for documents such as criminal history printouts or emails eligible for "Attorney/Client Privilege".
  - g) Recusal Form.(IAD Form – 13)
  - h) Investigator Notes Declaration (IAD Form – 11)
2. The IAD Administrative Section is responsible for maintaining the Control File throughout the investigation.

The investigator is responsible for maintaining the Investigative File throughout the investigation and forwarding the completed investigation to the IAD Administrative Section for merging into the Control File.





3. Additional Documents

As miscellaneous documents are accumulated throughout the investigation, they are added to the appropriate case files in the following manner:

- a) Copies of documents and evidence (when possible) are to be added to and maintained in the Investigative File; and
- b) Original documents and evidence are to be delivered to the IAD at the conclusion of the internal investigation and merged with the Control File.
- c) Documents and/or evidence are added to the case file and include items such as:
  - 1) Photographs of the complainant, subject member/employee, other involved personnel, witnesses, location/scene of the incident;
  - 2) Audio cassette tapes or CD/DVD (for digital recorders);
  - 3) Diagrams of the scene and other locations;
  - 4) Witness list, including addresses and phone numbers;
  - 5) Medical treatment records;
  - 6) Criminal history; and
  - 7) Email communications.
- d) Handwritten notes shall be maintained in the Investigative File. At the conclusion of the investigation, all handwritten notes shall be merged and permanently retained in the Control File.

E. Recusal Process

- 1. The investigator shall review the investigative file after assignment.
- 2. Prior to the start of an internal investigation:
  - a) The investigator shall disclose any relationship where it is clear that the nature of the relationship could be perceived to compromise the investigative process.
    - 1) If yes, the assigned investigator shall recuse him/herself from the investigation and document the circumstances on the Recusal Form (IAD Form - 13).
    - 2) If no, the assigned investigator(s) shall document this fact on the Recusal Form.
  - b) Upon completion of the Recusal Form, the appropriate first-level superior shall meet with the investigator to jointly review the Recusal Form.



Internal Investigations Procedures, Index Number V-T.1 – Part III

c) The first-level superior shall determine whether it is clear that the nature of the relationship could be perceived to compromise the investigative process.

1) If yes, the first-level superior shall approve reassignment of the investigation and document the decision on the Recusal Form.

An investigation may be reassigned if any of the following conditions exist, such as:

- (a) Family relationship;
- (b) Outside business relationship;
- (c) Romantic relationship;
- (d) Personal friendship;
- (e) Close work relationship (to be determined on a case-by-case basis); or
- (f) Directly involved in the incident, as defined in DGO M-3.

2) If no, the first-level superior shall approve the assignment and document the decision on the Recusal Form.

3) The investigator's first level superior shall ensure the Recusal Form is completed and signed and forwarded to the IAD prior to the start of the investigation.

4) The IAD shall retain the Form in the Control File.

F. Investigation Preparation

Investigators shall conduct a thorough, impartial, fact-finding investigation; take recorded statements from all relevant persons; gather, preserve, and examine physical evidence; and collect other information pertinent to the investigation.

1. Investigator Responsibilities

- a) The assigned investigator shall review the Internal Affairs Intake Checklist and ensure all items listed on the checklist are enclosed. Contact the IAD Administrative Sergeant if any item is missing.
- b) Ensure the CAL indicates that the complainant was furnished with:
  - 1) The *Your Guide to Filing a Complaint Against the Police* (TF-3208);
  - 2) A copy of the Complaint form (TF-3039b); and
  - 3) A copy of any statement (upon request).
- c) Ensure the complainant has been contacted to determine the nature, scope, severity of the complaint, and to identify potential witnesses and/or evidence.



d) Examine the allegations and identify issues

Review the allegation(s) and documents contained in the case file and complete an analysis to confirm each allegation and identify other potential *Manual of Rules* (MOR) related issues to be addressed in the investigation, such as:

- 1) Was the complaint investigated to the extent reasonably possible to determine whether the allegation could be resolved such as asking for corroborating evidence?
- 2) Was the member or employee on duty when the alleged misconduct occurred?
- 3) Do the allegations match the complaint narrative?
- 4) Are there any *MOR* violations not identified or addressed?
- 5) Has criminal misconduct been discovered?

If there is evidence of possible criminal misconduct, the investigator shall immediately or as soon as practical, make the proper notifications in accordance with the provisions of DGO M-4.1, CRIMINAL INVESTIGATIONS INVOLVING ACTIVE LAW ENFORCEMENT, OR A MEMBER OR EMPLOYEE OF THE DEPARTMENT,

- 6) What are the probable motives of any of the persons involved in the complaint or incident?
  - 7) What are the likely defenses or excuses?
  - 8) Are there potentially unidentified witnesses?
  - 9) Are unnamed members or employees involved?
- e) Prepare a list of questions to ask persons to be interviewed based on this analysis.
- f) Plan interviews and develop investigative strategies early in the investigation by determining days off and vacation schedules of the complainant, potential witnesses and the subject(s) of the investigation.
- g) The investigator shall contact the appropriate CID investigative unit and provide only follow-up contact information, if, during the course of an internal investigation, he/she locates additional witnesses that may be used in a criminal proceeding obtained **independently** from a Lybarger statement.
- h) Additional information obtained in civil litigation shall be incorporated into an internal investigation and provided to the Office of the City Attorney on a case-by-case basis. Additional information obtained during an internal investigation relating to civil litigation shall be provided to the OCA on a case-by-case basis.
- i) Contact the OCA to ascertain and request depositions, as necessary.



2. Examination of the Scene

If the investigator determines that an examination of the scene of the alleged misconduct or other locations is required, the examination shall include the following, when appropriate:

- a) Gathering and securing any physical evidence discovered;
- b) Becoming familiar with the layout of the scene;
- c) Identifying specific locations of witnesses and officers/employees;
- d) Returning to the scene at the same time of day the incident occurred to determine:
  - 1) Lighting conditions;
  - 2) Weather;
  - 3) Traffic patterns; and
  - 4) Character of the area (business, residential, industrial, etc).
- e) Taking photographs and/or video of the scene; and
- f) Canvassing for additional witnesses
  - 1) Canvass the scene and surrounding area for additional witnesses.
  - 2) Document any contacts made even if the contact indicates they have no knowledge of the incident.

3. Evidence Gathering

The following resources are queried and examined for information and evidence as soon as possible after an incident resulting in an IAD call-out:

- a) Communications Division CAD printout – For the time period during which the incident occurred.
- b) Mobile Display Terminal (MDT) – For car-to-car transmissions for the time period.
- c) Radio Talk Group recordings and purges.
- d) Phone bills of Departmental cellular phones for the time period during which the incident occurred.
- e) In-Car Video.

4. Requests for Medical and Laboratory Records

- a) Obtain all related medical records as soon as possible in cases where the medical condition of a complainant, witness, or subject is of importance.
- b) The release of medical records requires a signed release from the patient. Seek and obtain signatures for medical releases early in the investigation to allow adequate time for receipt and analysis of the documents.



- c) Members and employees may be ordered to take medical or laboratory examinations when:
- 1) The evidence sought is pertinent to the investigation;
  - 2) The evidence is easily degraded or destructible;
  - 3) Supervisory or command approval has been obtained;
  - 4) An attempt was made to obtain cooperation or consent;
  - 5) The procedure is medically safe, and not uncomfortable or undignified, and involves little or no bodily intrusion; or
  - 6) The appropriate warrant, if required, has been obtained.
- d) Members and employees may be ordered to:
- 1) Take a photograph; or
  - 2) Participate in a physical line-up.
- Note:** Consent is preferred but not required.
- e) Investigators conducting a physical line-up shall ensure that complainants and witnesses:
- 1) View the line-up without hearing what other witnesses or complainants are saying or discussing;
  - 2) Are instructed on how to indicate whether or not they were able to identify anyone (printed on the Line-up Card (TF-657));
  - 3) Are advised that the person sought may or may not be among those in the line-up and not to discuss the line-up with anyone else. Emphasize that it is equally important to clear a person not responsible as it is to identify the person responsible.
  - 4) The composition of the participants in a line-up (physical and or photographic) must be similar but not so similar in appearance as to confuse the viewer.
- f) Members and employees shall not be required to submit to a strip search, and/or a test for alcohol, narcotics, or drugs, unless there is probable cause supported by specific facts.
- g) Members and employees shall not be required to submit financial disclosure statements for examination pursuant to Government Code Section 3308 unless:
- 1) Such information is obtained or required under state law or legal procedure;
  - 2) The information tends to indicate a conflict of interest with respect to the performance of official duties;



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- 3) The information is necessary to determine whether to assign the person to a specialized unit where bribes or inducements may be offered in accordance with the provisions of Departmental General Order E-3.1, DEPARTMENT NOTIFICATION COMPLIANCE VERIFICATION.
  - 4) Through a voluntary submission by the subject;
  - 5) In response to a subpoena; or
  - 6) In cooperation with another investigative unit.
- h) The examination of a member or employee's locker or storage space owned or leased by the Department may occur under any of the following circumstances:
- 1) Pursuant to a valid search warrant.
  - 2) In lieu of a valid search warrant, one of the following conditions must exist:
    - (a) When there has been notification that a search will be conducted;
    - (b) In the presence of the person assigned to the locker or storage space;  
or
    - (c) With consent of the person assigned to the locker or storage space.

G. Interviews

1. Background Research

- a) Learn as much as possible about the person to be interviewed. Familiarity with detailed background information will assist in:
  - 1) Establishing facts regarding the credibility of the person being interviewed;  
and
  - 2) Obtaining the facts related to the investigation.
- b) It is not unusual for those being interviewed to inadvertently reveal critical information. The ability to recognize the significance of such comments and to capitalize on them often results from thorough research and familiarity with background information.
- c) Additional Information  
Check:
  - 1) Prior crime and arrest reports through the Records Management System;
  - 2) Public records such as credit reports; and



- 3) Appropriate law enforcement databases, involving individuals to be interviewed in accordance with the provisions of TB V-C.2, AUTOMATED INFORMATION SYSTEMS.

These records may have a direct impact on the interview and investigation. Background research for interviews is not considered a "Need to Know" or "Right to Know" circumstance; therefore, caution must be exercised.

2. Preparing for the Interview

a) Location of Interview

- 1) Conduct interviews with Departmental personnel at a Departmental facility in a private and comfortable location.
- 2) Make every effort to select and conduct private person interviews at a convenient location.

b) Order of Interviews

- 1) The order of interviews is frequently controlled by the circumstances of the investigation and the type of complaint. As a general rule, interviews should be conducted in the following order:
  - (a) Complainant (Interviewed as soon as possible, usually during the intake or processing phase.);
  - (b) Private person witnesses;
  - (c) Employee witnesses;
  - (d) Sworn witnesses;
  - (e) Subject member or employee.
- 2) Maintaining this interview order (a-d) usually provides sufficient background information prior to the interview with the subject member or employee.
- 3) All members and employees who are subjects, witnesses, or were present at the scene of the alleged misconduct, shall be interviewed.

Investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions. The IAD Commander approval shall be documented in the CAL.



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c) Scheduling

- 1) Conduct interviews in person unless circumstances prevent it. Phone interviews should be a last resort.
- 2) Determine witness and subject availability and schedule appointments for interviews in advance.
- 3) Don't rush an interview. When an interview is expected to be prolonged, plan for multiple sessions. Conducting multiple interviews will allow the investigator to address any inconsistencies or to clarify information from a previous interview.
- 4) Interviews of Departmental personnel should be conducted during their regular working hours whenever possible. Schedule interviews with private persons when convenient for the person being interviewed.

d) Recording Interviews

- 1) All interviews shall be recorded (tape or digital), with minimal "off the record" discussions.
- 2) When going "off the record," the interviewer shall denote the date and time and the reason for suspending the recorded interview (e.g., for human needs or a request from the representative).
- 3) If a private person (complainant or witness) refuses to allow the interview to be recorded, explain a recording is needed to preserve the accuracy and nature of the complaint. Appropriately document a refusal to record the statement and proceed with the interview and take a written statement.
- 4) Members and employees are obligated and required to cooperate and answer questions truthfully under penalty of insubordination.
- 5) Do not combine interviews with one another on the same side of a cassette tape or on a digital recorder without indexing. Use one side of a cassette for each separate distinct interview or index each interview on a digital recorder.
- 6) Label recordings
  - (a) Immediately after using each side of a cassette or when the entire cassette tape has been used, clearly mark the cassette with the IAD case number, the date of the interview, the name of the person interviewed on each side, and the name of the primary investigator. The anti-erase tabs shall be removed from the cassette after each side is recorded.
  - (b) If a digital recorder is utilized, the audio file shall be stored and/or transferred to a recordable CD or DVD disk and labeled in the same manner as cassette tapes. Transfer of the audio file to a compact disk soon after the recording is critical to avoid data loss from computer hard drives or data chips.





- 7) Interviews shall be transcribed at the request of the subject of the investigation, the complainant, command staff, investigator, the Office of the Inspector General (OIG), or any competent authority.
- 8) All recordings shall be merged into the Internal Affairs case file which shall be permanently retained.
- 9) Investigators may routinely provide a copy of the interview recording to the interviewee.
- 10) A member, employee, or his/her representative may utilize their own recording device during their interview.
- 11) Avoid conducting an interview in a location where loud background noise is present.
- 12) Test the recorder before beginning the interview and have extra batteries on hand.

3. Investigative Approach to Conducting Interviews

- a) Conduct interviews separately;
- b) Be respectful, courteous, and professional at all times.
- c) Gather facts.
- d) Be willing to accept whatever the person being interviewed has to say.
- e) Do not make threats, intimidate, or coerce.
- f) Ask a person being interviewed to explain inconsistencies, discrepancies and conflicts with physical evidence or other witness statements.

4. Representation During Interviews

- a) Officers (members, Rangers, and Reserve Officers) and police department employees have a right to representation during an interview when he/she reasonably believes that the interview will result in disciplinary action (Government Code Section 3300 et. Seq.).

**NOTE:** Although Government Code Section 3300 et. Seq. applies only to sworn personnel, the City of Oakland extends these rights to police department employees.

- b) Interviewers shall ensure and admonish representatives not to interfere with the interview process.



5. Defining Interview Objectives and Preparing a Question List

a) Before beginning an interview, have a clear understanding of the interview objectives. A typical interview will have one or more of the following objectives:

- 1) To identify additional subjects and/or witnesses;
- 2) To clarify allegations or information;
- 3) To resolve any discrepancies and inconsistencies in statements or information; and
- 4) To obtain information on motive or alibi.

b) A question list is a “road map” to the interview.

- 1) Arrange questions in chronological order;
- 2) Make the list easy to read using bullet points or short questions;
- 3) Highlight key questions;
- 4) Allow plenty of room to make notes or add questions in the margin;
- 5) If present, give the secondary investigator a copy of the list for his/her use during the interview;
- 6) Check off questions as they are covered in the interview; and
- 7) Review the list before concluding the interview and ensure that all the essential questions have been covered.

c) Secondary Investigator

In the event a secondary investigator is utilized during the interview, he/she shall:

- 1) Document the answers in his/her notes;
- 2) Document the need for additional questions/follow-up;
- 3) Ensure the notes are shared with the primary investigator; and
- 4) Include the notes in the case file.

6. General Strategies for Questioning

a) The primary investigator conducts the interview. The secondary investigator only engages in questioning as needed.

b) Try to interview private person witnesses alone. The presence of others may make it difficult for the investigator to get to the truth of the matter. If a witness insists on having another person present during the interview, advise the other person that he/she is only an observer and is not to participate in the interview.



- c) Attempt to obtain specific admissions or denials by asking each witness direct and specific questions about each allegation in which they have specific knowledge of or are able to address.

7. Beginning the Interview

- a) Begin the interview by stating:
  - 1) The date, time and the place of the interview;
  - 2) The name and role of each person present in the room;
  - 3) Explain the purpose of the interview; and
  - 4) The interview is being recorded.
- b) Allow the person being interviewed to describe what happened in his/her own words, without interruption.
- c) When a statement is made regarding others, prompt the interviewee to identify and describe each person by name, age, height, weight, race and other physical characteristics, whenever possible.
- d) Diagrams are often useful during an interview. Allow the interviewee to draw his/her own diagram to avoid claims that a prepared diagram influenced his/her story. Have the document signed and dated by the person drawing it, and include these documents in the case file.
- e) Cover each allegation and all relevant issues with each subject and witness. The following questions may be asked during the interview, when applicable:

(Explain why or why not)

- 1) Did it (the specific allegation) happen?
- 2) Did you do it?
- 3) Who did it?
- 4) Who was there when it happened?
- 5) Where were you when the incident happened?
- 6) Did you see any other person who may have seen or heard what happened?
- 7) Could the act have occurred without your knowledge?

8. Witness Credibility

An investigator may consider, in determining the credibility of a witness, any matter that has any tendency in reason to prove or disprove the truthfulness of a statement during an interview, including but not limited to any of the following:

- a) The demeanor of the witness while giving testimony and the manner in which he/she testifies;
- b) The extent of the witness's capacity to perceive, to recollect, or to communicate details;
- c) The extent of the witness's opportunity or location to perceive the incident;



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- d) His/her character for honesty or sincerity;
- e) The existence of bias, interest, or other motive;
- f) Consistency of statements given;
- g) Verification of facts; and
- h) Admission of untruthfulness.

9. Complainant Interviews

- a) Address each allegation in the original complaint during the complainant interview.
- b) Ensure the complainant has no additional allegations before the interview is concluded. Avoid leading questions. The complainant should merely be asked if he/she has anything else to add.
- c) When practical, examine any injuries and have photographs taken, even if the injury is not visible or readily apparent.
- d) Establish and document the reason for any delays in reporting the incident.
- e) Attempt to confirm existing or obtain additional witness names, addresses and telephone numbers.
- f) Determine the availability of the complainant for follow-up interviews.
- g) Attempt to establish the complainant's motive for making the complaint by asking questions such as:
  - 1) Why are you here today?
  - 2) What is your motive for making this complaint?
  - 3) What do you want done as a result of your complaint?
- h) Document when a complainant or private person witness is unavailable for an interview, fails to appear for a scheduled interview, or simply refuses to be interviewed. When attempting contact, document due diligence before eliminating the interview.
- i) At the conclusion of an interview, the complainant should be asked if he/she has any questions or has anything to add that is pertinent to the investigation, but has not been addressed in the interview.

10. Member and Employee Witnesses Interviews

- a) Members and employees shall be required to read and sign the Acknowledgement of Rights and Obligations Form (TF-722) prior to the interview.
- b) At the conclusion of each interview session, the member or employee interviewed shall be ordered not to disclose any of the information discussed in the interview except to his or her representative or attorney. The investigator shall advise the person interviewed that a failure to adhere to the order may result in a separate charge of insubordination.



11. Subject Interviews

- a) Provide the member/employee with a summary of the complaint as documented on the Complaint Investigation Report (CIR) prior to any interviews. The subject shall not be allowed to read the complaint itself or to review any witness statements prior to the interview. There is no legal requirement to provide investigative materials to the subject prior to the interview. (*Pasadena Police Officers' Association v. City of Pasadena* (1990) 51 Cal. 3d 564.).
- b) The investigator shall comply with the provisions of the Public Safety Officers' Procedural Bill of Rights Act, Government Code Section 3300 et. Seq. when interviewing officers (member, Ranger, or Reserve Officer) and Oakland Police Department employees.

**NOTE:** Although Government Code Section 3300 et. Seq. applies only to sworn personnel, the City of Oakland extends these rights to police department employees.

- c) A member/employee who has received a Complaint Notification letter may have a representative (e.g., legal counsel, friend, relative, co-worker, etc.) of their choice present at all times during any interview.

There is no restriction as to who can be a representative except that the representative cannot be a party to the same investigation.

- d) Ensures the Acknowledgement of Rights and Obligations Form (TF-722) has been read and signed by the subject before the interview.
- e) The representative:
  - 1) May observe all aspects of the interview to ensure that the provisions of the Public Safety Officers' Procedural Bill of Rights Act are met.
  - 2) May not interfere with the interview but may raise points of objection.
- f) The interviewer shall note any objections that are not resolved and include those objections in the Report of Investigation.
- g) The interview must be conducted at a reasonable hour, either while on duty or during normal waking hours unless the seriousness of the investigation requires otherwise.
- h) The nature of the investigation, name and rank of the interviewing officer(s), and all other persons to be present during the interview must be disclosed to the person to be interviewed prior to the interview.
- i) No more than two investigators may ask questions during the interview, and only for a reasonable period of time, taking into consideration the seriousness and complexity of the investigation.
- j) All persons shall be allowed to attend to their physical necessities.
- k) No one shall be subjected to offensive language, threatened with punitive action or promised a reward.



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- l) Visits by the news media or release of the home address of the subject of an investigation require the interviewee's consent.
- m) The person interviewed has the right to bring a recording device and record all aspects of the interview.
- n) If, prior to or during the interview, it is determined that the person being interviewed may be charged with a criminal offense, the investigator shall immediately terminate the interview and make the proper notification in accordance with the provisions of DGO M-4.1.
- o) When it appears the subject member/employee may be charged with a criminal offense, or if the subject invokes his or her Fifth Amendment rights, the subject shall, prior to providing a statement, be informed of their constitutional rights (*Miranda*) and be provided a *Lybarger* advisement. A *Lybarger* advisement consists of an order requiring the officer to answer questions, the threat of discipline for non-compliance, and the promise that the use of the statement will not be used against the officer in any criminal and/or civil proceeding.<sup>1</sup> A *Miranda* and *Lybarger* exemplar is located in Training Bulletin V-T.2, reference page IV-9.17.

**NOTE:** Employees are not included as a protected class under *Lybarger*, however, the City of Oakland affords employees the same protections.

- p) All subject interviews are to be concluded by asking the subject if there is anything else he/she would like to add or comment on.
12. The Office of the City Attorney or the District Attorney's Office shall be consulted regarding any legal questions concerning investigations or interviews.

H. Use of Lie Detection Screening Devices

1. No member, employee, or private person shall be compelled to submit to an examination by a lie detection or truth verification device against his/her will.

In appropriate cases, members, employees, and private persons may be offered an opportunity to submit to a lie detection screening device incident to an internal investigation. However, if a member or employee refuses the test, no record shall exist indicating an examination was offered and declined, and no disciplinary action may be taken as a result of the refusal. Departmental policy and procedures are enumerated in DGO I-12, LIE DETECTION SCREENING DEVICE.

2. In cases where the integrity of the Department is questioned or where there is direct conflict between subject and witness statements, a polygraph or Computerized Voice Stress Analysis (CVSA) examination may be offered to a member, employee, or private person with prior approval from the IAD Commander and in accordance with the provisions of DGO I-12 and Government Code Section 3307.

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<sup>1</sup> *Lybarger v. Los Angeles* (1985) 40 Cal.3d.822



3. A polygraph/CVSA may only be offered after the IAD has concluded their initial interview.
4. The results of a polygraph/CVSA examination administered to a member, employee, or private person who elects to take an examination, may be reflected in the investigator's report.

I. Locker/Storage Space Searches

No member or employee may have his/her locker or other assigned storage space searched, except in his/her presence, or with his/her consent, unless a valid search warrant has been obtained or the person has been notified that a search will be conducted. These requirements shall only apply to Departmental lockers or other storage areas that are owned or leased by the City of Oakland.<sup>2</sup>

J. Investigation Integrity and Confidentiality

All internal investigations shall be conducted lawfully and in accordance with Departmental policy and prevailing laws. All investigators shall gather, analyze and include exculpatory evidence for consideration as part of the adjudication process.<sup>3</sup>

The contents of internal investigations are confidential by law. In state actions, the requesting authority must file a *Pitchess* motion with the court showing good cause for the release of personnel records.<sup>4</sup> At the request of the Office of the City Attorney, the court will conduct an in-camera review of the documents requested to determine what, if any, documents shall be disclosed. In federal matters, the requesting authority must submit a *Henthorn* motion establishing good cause for the disclosure of records.<sup>5</sup> The *Henthorn* process is akin to the *Pitchess* procedure referenced above.

Upon completion of the IAD investigation and issuance of a final report by IAD when the recommended finding is sustained, the subject member/employee shall have access to the underlying data on which the report is based, including all recorded interviews, transcripts, and investigator's notes.

K. Personnel File Entries

No comment adverse to the interest of a member or employee shall be entered in that person's personnel file unless the subject first has the opportunity to read and sign the document containing such comment. If the subject refuses to sign the document, that fact shall be noted on the document and dated by the person entering the notation. In addition to existing appeal procedures, a subject may, within 30 days, file a written response to any adverse comment entered in his/her personnel file. This right is extended to former members and employees as well. Such written response shall be attached to the document containing the adverse comment.<sup>6</sup>

<sup>2</sup> *Government Code Section 3309* Governs the search of storage space or lockers, consent, and search warrant requirements.

<sup>3</sup> *Penal Code Section 135.5 (enacted in 1998)* Reads any person who knowingly alters, tampers with, conceals or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming the officer, is guilty of a misdemeanor.

<sup>4</sup> *Pitchess v. Superior Court 11 Cal.3d 531, 537, 538, 113 Cal.Rptr. 897* Provides when a criminal defendant seeks information from a peace officer's personnel records concerning prior complaints, a motion showing good cause i.e., a plausible factual justification for disclosure must be submitted to the court.

<sup>5</sup> *US v. Henthorn 931 F.2d 29 (2001)* The Ninth Circuit held that government has a duty to make a pretrial examination of the personnel files of testifying law enforcement officers for Brady material (any evidence the government finds that tends to establish the innocence of the accused).

<sup>6</sup> *Government Code Section 3305 and 3306* Govern the entry of adverse comments and the response thereto.



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However, the Department need not comply with the aforementioned procedure if local rules provide officers with greater protections, such as an administrative appeal hearing.<sup>7</sup>

Internal investigation files and material contained therein are considered personnel files<sup>8</sup> and shall be maintained and subject to confidentiality protection provided by statute and Departmental directives.

L. Report of Investigation

1. Investigators prepare and include a Report of Investigation in the case file once all interviews have been conducted and available evidence has been gathered.
2. The Report of Investigation includes a title page containing, at a minimum, the following required headings:
  - a) Complainant;
  - b) Summary of Complaint;
  - c) Applicable *Manual of Rules* violation;
  - d) Discovery of Additional *Manual of Rules* violation(s);
  - e) Subject(s) of Complaint;
  - f) Date/Time/Location of Incident;
  - g) Date Complaint Received;
  - h) Assigned Investigator; and
  - i) Disclaimer: "All definitions, concepts, facts, conclusions and recommendations contained herein are strictly administrative in nature without force of law and have no bearing on any legal body with competent authority."
3. Topics of Discussion
  - a) Summary of complainant's interview and/or background information;  
Analyze and explain inconsistencies, discrepancies and conflicts with physical evidence or other witness statements.
  - b) Summary of Witness Statement(s). Document refusals;
  - c) Summary of Subject(s) interview;
  - d) Disputed Facts;
  - e) Evidence;

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<sup>7</sup> *Crupi v. City of Los Angeles (1991)* The police department was not obligated to follow rules set forth in *Government Code Sections 3306 and 3306* if local rules provided "greater protections."

<sup>8</sup> Penal Code Section 832.8, Personnel Records.





- f) Other Relevant information; and
- g) Summary Discussion and Conclusions.
  - 1) When making the final discussion and conclusions, consider any and all relevant evidence, including, but not limited to:
    - (a) Circumstantial, direct and physical evidence, and
    - (b) Credibility determinations for witnesses, subjects and/or complainants shall be based on objective indicators (e.g., inconsistent or contradictory statement) rather than subjective ones (e.g., affinity for or dislike of a particular officer or complainant, a hunch, or suspicion).
  - 2) When reaching conclusions, a “preponderance of the evidence” standard shall be used.

M. Administrative Dispositions

Administrative Dispositions shall be utilized and approved by the IAD Commander in accordance with the provisions of DGO M-3. Administrative Dispositions shall be entered in the IAD Complaint Database.

N. Summary Findings

A Summary Finding is an abbreviated internal investigation in which a finding can be reached without conducting a formal internal investigation because a finding can be determined with no or minimal follow-up and based on the existing documentation, evidence, statements, and crime information data (e.g., Offense Report, Use of Force Report, video or digital recordings, complainant’s statement, radio purge, LRMS records).

- 1. A Summary Finding shall not be used if the evidence supports a sustained finding.
- 2. A Summary Finding Memorandum shall be prepared to document when an investigator concludes there is adequate information to determine a Complaint Finding from any of the following:
  - a. Interviews,
  - b. Statements taken,
  - c. Evidence collected, and
  - d. Available supporting documents.
- 3. The investigator need not interview or take statements from ALL subjects and witnesses in order to determine if there is preponderance of evidence.
- 4. All investigators shall seek prior approval from an IAD Commander **BEFORE** preparing a Summary Finding Memorandum. Approval shall be documented in the Chronological Activity Log.



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5. A Summary Finding Memorandum shall be forwarded for review and approval in the same manner as a normal internal investigation enumerated in accordance with the provisions of DGO M-3.

O. Recommended Findings

Once the investigation has been concluded, a recommended finding shall be made concerning each allegation, included in the Report of Investigation, and forwarded for administrative review (division-level only). Findings are categorized as follows:

1. Unfounded;
2. Exonerated;
3. Sustained;
4. Not Sustained;

P. Administrative Review

Division-Level

The chain-of-review shall commence with the investigator's first-level commander/manager and then directly to the IAD Commander or designee who shall review all division-level investigative files. The investigator's entire chain-of-command is not required to review completed investigations.

Q. Notification to IAD of Changes in Class, Subject Personnel, and Allegations

1. Discovery of Class I Violations
  - a. If a division level investigator discovers an additional allegation rising to the level of a Class I violation, the investigator shall advise the IAD Commander of the circumstances surrounding the new allegation.
  - b. The IAD Commander, in consultation with the Chief of Police, determines whether the investigation will be transferred to the IAD.
  - c. The investigative files are retained by the division-level investigator and not returned to IAD until directed to do so by the IAD Commander.
2. Personnel conducting an internal investigation shall notify the IAD, via email (opdiad@oaklandnet.com), within 24 hours whenever one of the following circumstances occurs:
  - a. A member or employee is added or removed as a subject from an internal investigation; and/or
  - b. A *Manual of Rules* allegation is added or removed from an internal investigation.

R. Feedback

The IAD Commander or his/her designee shall provide feedback to the internal investigator regarding the quality and disposition of the investigation.