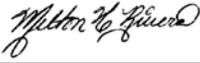


	<b>PALACIOS POLICE DEPARTMENT</b>	
	<b>Policy 2.4 Internal Investigation Process-Complaint Procedures</b>	
	<b>Effective Date:1/04/2021</b>	<b>Replaces:02/07/2006</b>
	<b>Approved:</b>  <b>Milton Rivera, Chief of Police</b>	
	<b>Reference:</b> TBP 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, and 2.10.	

## PERSONNEL - COMPLAINT PROCEDURES

Nothing in these general orders shall be construed or is intended to alter the at-will status of any employee and no employee or supervisor of the City of Palacios has the authority to make any statement or take any action which alters the at-will status of any employee or which creates any expectation of future employment.

### I. POLICY

The image of the Department depends on the personal integrity and discipline of all Departmental employees. To a large degree, the public image of this Department is determined by the professional response of the Department to allegations of misconduct against it or its employees. The Department must competently and professionally investigate all allegations of misfeasance, malfeasance, nonfeasance by employees and complaints bearing on the Department's response to community needs.

### II. PURPOSE

To establish procedures for the filing, investigating, and dispositions of internally and externally originated complaints against employees of the Palacios Police Department. These complaints include all alleged or suspected violations of the Code of Conduct, Department General Orders, the City of Palacios personnel Rules and Regulations, the Ordinances of the City of Palacios or the laws of the State of Texas or the United States.

### III. PROCEDURES

- A. The Department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Department members shall receive complaints courteously and shall handle them efficiently. All officers are obligated to explain the complaint procedures to inquiring citizens.
- B. The Department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In such situations, words, actions, and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of serious allegations and underlying circumstances so that complaints can be resolved considering the complicated pressures of police work.

#### IV. DEFINITIONS

- A. **Discipline.** A method of training or developing any employee by proper supervision and instruction. Discipline may be positive (awards) or negative (punishment).
- B. **Disciplinary Action.** Punitive measures taken against an employee as the result of a complaint(s) of one or more violations which have been sustained by administrative investigation. These measures include written reprimand, suspension, demotion and termination.
- C. **Discipline (Positive).** Positive discipline is oriented towards seeking voluntary compliance with established policies, procedures, orders. Methods of positive discipline include:
1. Recognition of excellent job performance through rewards or awards.
    - a. When positive feedback concerning an employee's, performance is received from people outside the Department, the person who receives the information shall make a record of the comments which will be passed to the employee and the employee's supervisor. Normally, when the Chief receives positive comments about an employee, he will write an acknowledgment thanking the citizen. Copies of the citizen's statement and the Chief's response are sent to the officer involved, the supervisor and, if a significant action, a copy of all correspondence is placed in the employee's personnel file.
    - b. Truly exceptional acts should be clearly and promptly identified to the Chief of Police. Such acts may be the basis for special awards or for special recognition by citizen-community groups or media coverage.
  2. Discussion and Counseling
  3. Training
- D. **Complaint Defined.** Any allegation of conduct by an employee which is:
1. Unconstitutional;
  2. Unlawful; or
  3. In violation of Departmental General Orders or City of Palacios personnel rules.
- E. **Non-Disciplinary Action.** Oral or written counseling given to employee to bring attention to noted job performance deficiencies or chronic regulation infractions in an effort to induce voluntary compliance.
- F. **Personnel Incident Form.** Form, used by the supervisor who initially receives information, to report details of alleged employee misconduct or to report favorable actions of an employee.

## G. Level I Complaints.

1. Crime. Complaint of involvement in criminal conduct, such as bribery, theft, perjury, etc.
2. Excessive Force. Complaint that the use or threatened use of force against a person was unreasonable and unnecessary under the circumstances.
3. Arrest/Detention. Complaint that the restraint of a person's liberty occurred without probable cause, reasonable suspicion or other legally valid reasons.
4. Entry. Complaint that entry into a building or other property was improper and/or that excessive damage was caused to the property to gain entry.
5. Search. Complaint that the search of a person or property was illegal, improper or unjustified.
6. Harassment. Complaint that taking, failing to take, or the method of police action was predicated upon factors that were irrelevant, such as race, attire, sex, age, etc.
7. Serious Rule Infractions. Complaint such as disrespect toward a supervisor, intoxication on duty, sleeping on duty, neglect or dereliction of duty, false statements, or malingering.

## H. Level II Complaints

1. Demeanor. Complaint that an employee's manner, gestures, language or other actions were offensive or inappropriate or gave the appearance of a conflict of interest or misuse of influence.
2. Minor Rule Infraction. Complaint such as tardiness, faulty driving or failure to comply with established Department or City policies and procedures.

## V. REQUIREMENTS FOR MAKING FORMAL COMPLAINTS

Personnel complaints shall comply with Section 614.022, Government Code, as interpreted by the City Attorney's office.

- A. Persons wishing to make formal complaints must do so by submitting a written statement of the complaint accompanied by their signature. A notarized affidavit is preferred but not required.
- B. A signed letter of complaint may be enough after verification that it is not fictitious or signed with a fictitious name. This determination shall be made by the Chief of Police.
- c. An internally originated complaint may be made by any Department supervisor or other employee by submitting a written statement with signature or by notarized affidavit.
- D. The Chief of Police may serve as the complainant of an externally originated complaint in accordance with applicable State law.

## **VI. TIME LIMIT ON ACCEPTING COMPLAINTS**

Personnel complaints shall not be accepted more than thirty days after the alleged incident except for the following exceptions:

- A. When the complaint involves a criminal violation, the criminal statute of limitations will prevail. However, such limitations shall not prevent the Chief of Police from taking disciplinary action deemed necessary to preserve the integrity of the Department.
- B. When the complainant can show good cause for not making the complaint within the specified time limit, the complaint may be accepted. This determination shall be made by the Chief of Police.
- c. When otherwise authorized by the Chief of Police.

## **VII. ANONYMOUS COMPLAINTS**

Anonymous complaints shall be investigated only at the specific direction of the Chief of Police. If a preliminary investigation identifies a violation, the formal complaint may be signed by the Chief of Police or his designee.

## **VIII. INVESTIGATION RESPONSIBILITY**

- A. All Level I complaints shall be formally investigated by personnel as assigned by the Chief of Police.
- B. Level II complaints shall be initiated by Personnel Incident Form and conducted at the line supervisor level with prior approval and staff supervision of the Chief of Police. Level II complaints which are conducted at the line supervisor level shall be subject to non-disciplinary action only unless urgent circumstances exist. Level II complaints which are investigated at the line supervisor level may be subject to disciplinary action only at the authorization of the Chief of Police. Level II complaints may be subject to a formal investigation with the approval of the Chief of Police. Level II complaints which are formally investigated shall be subject to the full range of disciplinary actions including termination.

## **IX. AUTHORITY AND RESPONSIBILITY**

### **A. All Employees**

- 1. Non-supervisory personnel shall utilize their chain of command to report infractions. Non-supervisory personnel may report infractions directly to the Chief of Police or City Manager (only if the complaint involves the Chief of Police) if the infraction involves a person<sup>s</sup> in their immediate chain of command or the infraction is of a Level I classification.
- 2. Any employee who gains knowledge of a reported infraction shall immediately submit a memorandum outlining the details of the reported infraction to his supervisor as soon as practical. Each participating employee in a complaint investigation shall submit all affidavits and memoranda that are required by the investigator of the complaint.

## **B. Supervisors**

1. Supervisory personnel shall initiate an Personnel Incident Form when they become aware of an infraction by any member of the Department.
2. Violations designated as Level II infractions shall be investigated entirely at line supervisor level. Non-disciplinary action, unless forwarded to Chief of Police for a formal investigation, will also be conducted at the line supervisor level.
3. Violations designated as Level I infractions shall be forwarded directly to the Chief of Police in a detailed Personnel Incident Form.
4. Any employee who initially becomes aware of another employee's involvement in a Level I incident, shall inform the on-duty supervisor or his designee. If the violation is of a serious nature, the on-duty supervisor or his designee shall notify the Chief of Police. The Chief of Police or his designee will then determine whether to relieve the accused employee from duty.

## **C. Traffic Citations/Arrests**

Complaints from citizens regarding a dispute over legal issues or their guilt or innocence in the issuance of a traffic citation or subsequent to an arrest shall be documented in a memorandum and forwarded to the Chief of Police by the supervisor or officer who initially becomes aware of the complaint. However, if a citizen can furnish enough evidence that a violation of law or Departmental policy has occurred, the complaint, at the discretion of the Chief of Police, may be investigated.

## **X. INVESTIGATION OF EXTERNALLY ORIGINATED COMPLAINTS**

### **A. Level I Complaints**

1. Citizens who telephone or appear in person between 0800 and 1700 hours on weekdays and wish to make a complaint against an employee shall be referred to the Chief of Police or his designee who shall:
  - a. interview the complainant in person or by telephone to obtain all pertinent information so that the complaint may be placed on a Personnel Incident Form;
  - b. advise the complainant that the complaint must be made in writing and signed by the complainant if it is to be formally investigated. If the complainant desires to sign the complaint, the supervisor shall advise him to appear in person so that an affidavit may be obtained. If the complainant cannot appear in person, advise the complainant to send a signed letter addressed to the Chief of Police;
  - c. send the original affidavit (if obtained at the time of the initial complaint) and the Personnel Incident Form, without employee response, directly to the Chief of Police office and retain a copy. No copies of the affidavit shall be forwarded to any other individual(s);

2. The Chief of Police or his designee shall examine the content of the complaint to determine if it meets the requirements of a complaint, i.e. alleges a violation of the law or the regulations of the Department and/or the City of Palacios
3. The Chief of Police or his designee will assign a control number to the case and designate an investigator to examine the allegation.
4. The accused employee may be required to respond orally and in writing to the complaint.

B. Level II Complaints

1. Citizens who telephone or appear in person between 0800 and 1700 hours on weekdays and wish to make a complaint against an employee shall be referred to the Chief of Police.
  2. When the Chief of Police is unavailable, complainants shall be referred to an on duty supervisor. The supervisor shall:
    - a. interview the complainant in person or by telephone to obtain all pertinent information so that the complaint may be placed on a Personnel Incident Form;
    - b. send the original Personnel Incident Form to the Chief of Police for further determination of complaint classification;
  3. When a Level II complaint is to be resolved at the line supervisor level, the investigative file will be set up and delivered to the appropriate supervisor who shall investigate the allegation. The investigation will be properly documented and submitted to the Chief of Police for approval.
- c. The accused employee may be required to report to the office of the Chief of Police at the outset of an investigation and may be instructed to respond orally and in writing to the complaint.

**XI. INVESTIGATION OF INTERNALLY ORIGINATED COMPLAINTS**

- A. The supervisor who -initially becomes aware of an alleged or suspected Level I violation shall forward a Personnel Incident Form detailing the violation directly to the Chief of Police.
- B. The Chief of Police will examine the content of the Personnel Incident Form to determine if the requirements of a complaint (alleges a violation of the law or the regulations of the Department and/or the City of Palacios are present.
- C. The Chief of Police or his designee will assign a control number to the case and designate an investigator to examine the allegation.
- D. At the discretion of the Chief of Police, if the investigation is to be conducted at the line supervisor level, the investigative file shall be delivered to the appropriate supervisor.

## **XII. EMPLOYEE'S RIGHTS DURING INTERNAL INVESTIGATION**

### **A. Requirements to Answer Questions**

1. An employee shall be required to answer questions relating to his duties and may be disciplined for refusal to answer such questions in accordance with the Garrity doctrine and applicable law.
2. Any such required statements could be used against the employee in a disciplinary action or civil proceeding. The statements would not be admissible in subsequent criminal action.

### **B. Supervisor's Presence During Interview**

An accused employee may request that his immediate supervisor or other member of his chain of command be permitted to attend an interview regarding an investigation of noncriminal conduct. The supervisor may attend in an observation capacity only and shall not take an active part in the interview. An employee's supervisor shall not be permitted to attend an interview regarding an investigation of criminal conduct.

### **C. Counsel's Presence During Interview**

1. The accused employee will not be permitted to have counsel present during an interview concerning an internal investigation. The Fifth Amendment right to counsel does not apply to administrative matters if a Garrity order has been issued to the employee.
2. An accused employee is not entitled to receive the Miranda warning during an administrative investigation. The employee shall be directed to read and sign the Internal Investigation Warning and shall be provided with a copy.

### **D. Search of Equipment**

Reasonable searches of Departmental equipment (lockers, desks, vehicles, etc.) and facilities for the purpose of identifying and securing evidence that may be utilized as part of an administrative investigation. The search must be approved in advance by the Chief of Police or his designee and the circumstances shall be documented by the supervisor in a memorandum to the Chief of Police through the chain of command. Pursuant to these procedures and orders, no employee shall have any expectation of privacy in any Departmental equipment or facilities such as lockers, desks or vehicles.

### **E. Special Examinations**

1. An accused employee may request, by memorandum, to undergo a behavioral cause investigation, blood test, or polygraph examination if he believes such would be beneficial to his defense. The Chief of Police shall authorize or deny all such requests.
2. The Department may require an accused employee to submit to a behavioral cause investigation or polygraph examination. The results of such

examination would be limited to administrative use except as provided by law.

#### **F. Polygraph Examinations**

1. In some cases, a complainant may undergo a polygraph test to substantiate his allegations made against an employee in an affidavit. When the test reveals no deception on the part of the complainant, the accused employee may be ordered to submit to a polygraph test.
2. Should the accused employee refuse to take the test after being ordered by the Chief of Police, the accused employee may be subject to disciplinary action up to and including termination for refusal to obey a lawful order (insubordination).
3. Should the investigation originate from an internal allegation, the involved employee(s) may be ordered to take the polygraph test when in the best interest of the Department. Section F(2) above shall apply.

#### **G. Medical and Laboratory Examination**

The Chief of Police or his designee may, based on his observation, require a Department employee to submit to a test for alcohol or drug use while on duty. The results may be used in the disciplinary process. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.

1. If the employee is believed to be under the influence of alcohol, a licensed breathalyzer operator may administer the test. The Chief of Police or officer in authority shall witness the test and sign the report. (breath testing instrument may be used to perform this test.)
2. If the employee has a blood alcohol reading of .05 or higher, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the Chief of Police or officer in authority.
3. If the employee is believed to be under the influence of self-administered drugs, he may be compelled to submit to a blood and/or urine test. The test shall be administered under medical supervision where hygienic safeguards are met. The sample will be handled using the same safeguards as evidence in a criminal process.
4. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty as soon as possible by the Chief of Police or other officers in authority.
5. If an employee refuses to submit to a test, (alcohol or drugs) then the supervisor may relieve the employee from duty for failure to cooperate in an administrative investigation.

## H. Photograph and Lineup Identification Procedures

Officers may be required to stand in a lineup for viewing by citizens for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and may result in dismissal.

1. A photo identification book of Department employees may be maintained for the purpose of identification by citizens of an employee accused of misconduct. Photographs of employees for the identification book may be required by the Department and shall be used only when narrowly related to the employee's job.
2. Photographs or videotape pictures of employees, with or without an employee's consent, may be taken for the purpose of internal investigations as related to the employee's job when the employee is suspected of misconduct.

## **XIII. COMPLETION OF COMPLAINT INVESTIGATION**

A. Upon conclusion of an administrative investigation, the complaint will be classified as one of the following:

1. Unfounded - Allegation is false or not supported factually.
2. Exonerated - Incident complained of did occur but the officer's actions were lawful and proper.
3. Not sustained - Insufficient evidence either to prove or disprove the allegation.
4. Sustained - Allegation is supported by sufficient evidence.
5. VNR - Violation not related to initial complaint.

B. Upon completion of the investigation, the Chief of Police shall forward the file to the appropriate City Official for review.

C. The Chief of Police or his designee will notify the complainant of the final disposition except when a pending criminal case might be compromised by disclosure of this information.

D. Regardless of disposition, all complaints that are investigated shall be submitted to the City Manager for review. The Chief of Police may forward the investigation to the appropriate supervisor so that preventive measures can be taken to avoid similar complaints in the future.

## **XIV. CONFIDENTIALITY OF INVESTIGATIONS**

A. All complaint investigations shall be considered confidential and, except as provided below, no portion of the investigations may be reproduced without the authority of the Chief of Police.

- B. Any employee or external complainant, upon written request, shall be provided with a copy of his own work product. All copies, when the original has become part of the investigative file, must be stamped as "confidential".
- C. Investigative reports shall not be released except when required by law or authorized by the employee in writing.
- D. The City of Palacios must respond to any subpoena for internal investigation records, however, it is the policy of the City of Palacios and the Department to contest all such subpoenas where non-frivolous grounds exist for such a position. If a court of competent jurisdiction orders the City to produce the records, the order will be complied with or appealed, after consulting the City Attorney's Office or other appropriate legal advisor.

## **XV. TYPES OF DISCIPLINARY ACTIONS**

- A. All disciplinary action will be based on substantial evidence. "Proof beyond a reasonable doubt" or "a preponderance of the evidence" is not required.
  - 1. Substantial evidence is defined as such evidence that a reasonable mind might accept as adequate to support a conclusion. It is that quality of evidence necessary for a court to affirm a decision of an administrative board.
  - 2. Proof beyond a reasonable doubt is defined as such proof as precludes every reasonable hypothesis except that which it tends to support, and which is wholly consistent with the defendant's guilt and inconsistent with any other rational conclusion.
  - 3. Preponderance of evidence is defined as evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it.

### **B. Level II Infractions**

Level II infractions that are classified as sustained following an administrative investigation shall be subject to the following non-disciplinary actions only unless formally investigated or urgent circumstances exist, and other disciplinary actions are authorized by the Chief of Police.

- 1. Verbal Warning The purpose of a verbal warning is to allow a supervisor to bring to the employee's attention the need to improve his work performance, work habits, behavior, or attitude, and to serve as a warning against further unsatisfactory conduct. The supervisor shall utilize the occasion to identify and define the area needing improvement and inform the employee as to how such improvement can be realistically achieved. The supervisor shall document the verbal warning on a Personnel Incident Form and forward it to the Chief of Police for disposition.

2. **Written Warning** The purpose of a written warning is to bring to the employee's attention the need to improve his performance, work habits, behavior, or attitude where a verbal warning has not resulted in expected improvement, or when action more serious than a verbal warning is warranted. The supervisor shall document the violation on a Personnel Incident Form and forward same to the Chief of Police through the chain of command with a recommendation for a written warning. Upon approval, the form and the written warning issued by the supervisor shall be placed in the employee's Departmental file. If not approved the supervisor shall retain the option to issue a verbal warning unless otherwise directed.
3. **Training** When additional training is warranted and approved by the Chief of Police.

### **C. Level I Infractions**

Level I infractions which are classified as sustained are subject to the following types of disciplinary action which can only be assessed by the Chief of Police subject to appeal and approval by the City Council.

1. **Written Reprimand**
2. **Suspension;**
3. **Demotion;**
4. **Termination.**

Disciplinary action involving potential monetary loss by the employee, including suspension, demotion and termination shall only be assessed after a formal internal investigation and subsequent to the affected employee being given an opportunity to provide any mitigating information.

The Chief of Police may solicit recommendations for disciplinary action as he deems necessary.

Sustained Level I infractions are also subject to the non-disciplinary actions that are described in paragraph B of this Section if so, ordered by the Chief of Police.

## **XVI. SPECIAL PROCEDURES**

### **A. Complaints Involving Alleged Criminal Violations**

1. All criminal investigations involving Department employees shall be conducted by the Texas Rangers Office or other appropriate law enforcement agency; not by the Palacios Police Department.
2. Any time that an employee of the Department learns that a law enforcement agency other than the Palacios Police Department has arrested or issued an arrest warrant for another employee of the Palacios

Police Department, the employee shall immediately report the information concerning the arrest and/or the warrant to the Chief of Police.

**B. Complaints against the Chief of Police**

When a valid complaint is made against the Chief of Police, the complaint shall be handled in accordance with these General Orders except that the (appropriate City Official) or his/her designee shall, in that circumstance, act as the Chief of Police.

**C. Departmental Vehicle Accidents**

When the investigation of an accident involving a Departmental vehicle reveals misconduct of a Department employee, the act shall be investigated in accordance with the provisions of this General Order.

**D. Emergency Relief from Duty, Suspension, or Discharge**

1. Any supervisor has the authority to impose emergency relief from duty for an employee until the next business day when it appears that such action is in the best interest of the Department and/or the employee. Whenever an employee is relieved from duty, the Chief of Police shall be immediately notified.
2. Only the Chief of Police has the authority to place an employee on administrative leave with pay.
3. When an employee is temporarily relieved from duty, his supervisor shall collect the employee's badge(s), Department issued weapon(s) and police identification card. When an employee is discharged, the supervisor shall ensure that all city issued property and equipment used by the employee is turned in. In either case, the supervisor shall forward, through the chain of command, a written report detailing the **items that he has collected.**

**XVII. APPEALS AND GRIEVANCES**

Appeals and grievances may be filed by any employee in accordance with the City of Palacios Personnel Policies and Procedures. Employees may appeal disciplinary actions of the Chief of Police to the City Manager.

**XVIII. BEHAVIORAL CAUSE INVESTIGATION**

- A. A behavioral cause investigation is an administrative investigation which is conducted when an employee exhibits unusual or abnormal behavior which affects his or her ability to perform her job in a proper or safe manner. This may either be observed behavior by the employee's supervisor(s) or a perceived behavioral deficiency which is claimed by the employee. The employee is referred, at the City's expense, to a licensed psychologist who will examine the employee and decide as to his fitness for duty in light of the observed/claimed behavior.

## **B. Authority and Responsibility**

1. The Chief of Police may initiate a behavioral cause investigation whenever he believes it is in the best interest of the employee and/or the Department.
2. The employee's supervisor may recommend to the Chief of Police a behavioral cause investigation based upon the nature of the complaint and/or the accused employee's disciplinary record.
3. Any employee who is the subject of a behavioral cause investigation will be referred to the psychologist under City contract that the Department deems qualified.

## **C. Who May Undergo A Behavioral Cause Evaluation**

1. Any Department employee who exhibits unusual or abnormal behavior which can reasonably be expected to prevent that employee from accomplishing his assigned duties in a safe or proper manner.
2. Any Department employee who exhibits unusual or abnormal behavior which, if not restricted, can reasonably be expected to place that employee or another person in danger.
3. Any employee who perceives a personal behavioral deficiency and requests such an investigation and has such a request approved by the Chief of Police.

## **D. Self-Injection into A Behavioral Cause Evaluation**

1. If an employee feels that he has an emotional or stress related problem that has resulted in a complaint, he may request a behavioral cause investigation by contacting the Chief of Police.
2. The purpose of self-injection into a behavioral cause investigation is to identify the cause of the unusual or abnormal behavior on the part of the employee and to provide him with professional assistance in redirecting or changing his behavior.
3. The final diagnostic evaluation will be presented to the Chief of Police for consideration in determining what action, if any, is to be taken as a result of the original complaint.

## **E. Interview with A Psychologist**

All employees entering a behavioral cause investigation shall be interviewed by a psychologist licensed to practice in Texas, who may have the biographical and Departmental history of the employee plus any profile resulting from the applicant-level psychometric testing. Any information obtained by the psychologist which does not relate to the specific incident or problem under investigation will be considered privileged communication and shall not be entered into any Departmental file or history on the employee.

## **F. Handling of Mentally Disturbed Employees**

1. When a supervisor becomes aware that an employee has reported for duty exhibiting, or while on duty exhibits, abnormal behavior, indicative of a disturbed mental or emotional condition, the employee shall be removed from any assignment which necessitates contact with the public. If necessary, the employee may be temporarily relieved of duty by his supervisor. The supervisor shall notify the Chief of Police as soon as practical.
2. When a supervisor becomes aware of a suspected behavioral problem and/or any of the administrative actions have taken place as described in Section XVIII. paragraph F. I he shall submit a confidential memorandum to the Chief of Police for his consideration.