

PALO ALTO POLICE DEPARTMENT



INTERNAL AFFAIRS AND COMPLAINT INVESTIGATION GUIDELINES

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DEFINITIONS

For purposes of this manual, the following definitions will apply:

PERSONNEL COMPLAINT:

An allegation of circumstances amounting to a specific act or omission which, if proven true, would amount to inadequate service, misconduct or criminal actions in violation of any Federal, State or local laws, of the Palo Alto Police Department General Orders, or the City's Merit Rules and Regulations.

ADMINISTRATIVE INVESTIGATION:

Any investigation of any alleged violation of the Palo Alto Police Department Policies and Procedures, City of Palo Alto Merit Rules and Regulations, or any Federal, State or local laws conducted against an employee of the Palo Alto Police Department. These investigations may be conducted by department employees or supervisors at the Division level.

MISCONDUCT:

An act or omission by an employee, which if proven true, would normally result in some form of discipline, sanction, or remediation.

SUPERVISOR INQUIRY INVESTIGATION:

An investigation of an issue of a minor nature or concerning a policy or procedure of the Palo Alto Police Department, whether raised internally or by a member of the public. Final authority to determine whether an issue is classified as a Supervisor Inquiry Investigation, Internal Investigation, or Personnel Complaint shall rest with the Chief.

CRIMINAL INVESTIGATION:

An investigation of any allegation made against an employee, whether on or off duty, which involves alleged criminal activity shall be deemed a Criminal Investigation. An Administrative Investigation will also be conducted separate from the Criminal Investigation.

POLICY STATEMENT

It shall be the policy of the Palo Alto Police Department to receive complaints and personnel inquiries from members of the public in a courteous and professional manner. Administrative investigations shall be appropriately documented, promptly investigated and/or addressed, and conducted in a timely, legal and ethical manner, strictly adhering to procedural safeguards regarding employee rights. Police Department employees shall demonstrate sincere responsiveness to concerns of members of the public, will inform members of the public that their complaints and inquiries will be taken seriously, and shall meet legal requirements for accepting and investigating complaints.

All documented complaints will be deemed a Citizen's Complaint Investigation, Administrative Investigation, or a Supervisor Inquiry Investigation.

This manual consists of the current policies and practices of the Palo Alto Police Department and shall be followed by all Department employees.

Investigations will be completed by internal or external personnel at the direction of the Chief of Police or their designee.

COMPLAINTS ABOUT EMPLOYEES OR DEPARTMENT

RECEIVING COMPLAINTS

Complaints will be received in any form. They will be taken in person, by telephone, in writing, from a third party and from anonymous complaints. They may be initiated by members of the public, governmental agencies, or from within the Police Department.

The employee accepting the complaint shall immediately refer the complaint or the complainant to the ranking supervisor or manager on duty in the Division that is the subject of the complaint. If the employees involved in the complaint cannot be immediately determined, the employee accepting the complaint should route the complaint information through their chain of command.

The supervisor should obtain a detailed narrative of the complaint. The supervisor should print out the Citizen's Complaint Packet (from the Shared drive) and furnish the complainant with the Policy Statement, The Palo Alto Police Department Complaint Advisory Form, and the Complaint Procedure Form. The supervisor should advise the complainant that knowingly filing a false allegation of misconduct may result in criminal prosecution per PC 148.6(a)(1). The supervisor will then assist the complainant in completing the Palo Alto Police Department Complaint Form, ensuring a signature of the complainant is on the Complaint Form and Advisory Form, if possible. A refusal to sign should be noted. If the complaint is received by telephone the conversation should be recorded, with notification to the complainant. The complaint information should be completed on the Palo Alto Police Department Complaint Form by the supervisor if the complainant refuses to meet in person. The informational complaint forms should then be mailed to the complainant by the supervisor. If the complaint involves personal injury of the complainant and that person has sought medical treatment, the supervisor should assist the complainant in completing the Consent for Release of Medical Information Form.

If a complaint involves a serious in-progress situation or issues involving fitness for duty, the appropriate Division Captain and the Personnel and Training Unit shall be notified immediately and, in turn, will notify the Chief. If an incident is likely to result in a Criminal Investigation against a Police Department employee, the Personnel and Training Unit and the Division Captain will immediately consult with the Chief to determine who will conduct the Criminal Investigation.

SUPERVISOR RESPONSIBILITIES

The supervisor or manager shall:

- 1) Ensure that any alleged misconduct has ceased.
- 2) Provide medical attention if needed.
- 3) Prevent the loss of evidence and statements.
- 4) Make every reasonable effort to obtain names, addresses and telephone numbers of additional witnesses

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the employee's immediate supervisor. However, the Police Chief or authorized designee may direct that another supervisor investigate it. If the allegation just occurred

and both the officer and complainant are present, the supervisor should obtain enough initial information from the complainant and officer in order to make a preliminary determination of what occurred. A supervisor has the right to obtain information from the employee until the supervisor believes that the officer's actions could lead to discipline.

If at any time a supervisor believes that the officer could be disciplined for his/her actions, the supervisor should cease with any further questioning. Any further questioning of the involved officer should comply with the provisions of the Public Safety Officers' Procedural Bill of Rights (Government Code Sections 3300 et. seq.)

When appropriate, as much evidence as possible should be gathered during the initial receipt of the complaint. Photos should be taken of injuries or damaged property. The supervisor or manager shall obtain a statement from the complainant. Whether handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement. Unless the complainant refuses, all statements obtained from the complainant shall be recorded, including the initial statement. A refusal, however, should be noted on the complaint form. The complainant should be provided a copy of his/her original complaint per Penal Code 832.7.

In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the employee's Division Captain/Coordinator, the Personnel and Training Unit, or the Police Chief who will initiate the appropriate action.

In all matters where a formal complaint is made, the supervisor or manager shall relay it to their chain of command. The Division Captain will determine who will conduct the investigation.

WITHDRAWN COMPLAINTS

In cases where the complaining party withdraws the complaint, the decision to continue with the investigation or not shall be made by the Police Chief.

VERIFICATION

Upon receiving a complaint, the investigator(s) will determine if Palo Alto Police Department personnel are involved. If Palo Alto Police Department employees are not involved, the complaining party will be referred to the proper agency. The case finding will be "No Finding."

TIME LIMITATIONS

Pursuant to Government code Section 3304(d) and 3508.1, the investigation should be completed within one (1) year of discovery of the allegation unless such investigation falls within one of the exceptions delineated within those provisions.

REVIEW PROCESS

All complaints received by the Personnel and Training Unit will receive an Investigation number, per category, or a Supervisor Inquiry Investigation (SII) Report case number.

The investigation number and initial information will be logged into the Palo Alto Police Department's IAPRO Computer Management System. Refer to PAPD policy 1026, Peace Officer Personnel Files for more information.

Depending upon the nature of the allegations and/or personnel involved, the investigation may be conducted by a Division Lieutenant, a Sergeant, or other employees of the Police Department. The Division Captain will evaluate each complaint to determine whether the complaint is of such a minor nature that it should be investigated at the supervisory level or should be assigned to another department employee.

The assigned investigator is responsible for completing the investigation in a timely manner. The investigator will notify their chain of command of any anticipated delays in a timely conclusion of the investigation and regularly report the progress of the investigation as it is conducted. The Department is committed to the timely resolution of administrative investigations, while also being mindful of parallel court proceedings.

The Chief should be notified of all allegations of criminal conduct or serious misconduct by Department employees. The Chief will be given a bi-weekly report of all complaints from the Personnel and Training Unit. This report will include an update on all investigations in progress.

SUPERVISOR INQUIRY INVESTIGATION

A Supervisor Inquiry Investigation is intended to document minor issues, where no discipline is recommended. A Supervisory Inquiry Investigation may serve as an early warning indicator, which allows supervisors to address potential problems before they become serious. Examples of Inquiries are:

- Matters of public concern that, on their face, do not allege misconduct or neglect of duty by an employee of the Police Department.
- Misunderstandings.
- Minor issues of discourtesy or other conduct unbecoming an officer.
- Misinformation of Department Policies and Procedures.

All Supervisor Inquiry Investigations should be documented. Supervisors shall initiate corrective action as appropriate, and note the corrective action taken.

The Personnel and Training Unit will review Supervisor Inquiry Investigation forms when submitted and ensure that the information is entered into the IAPRO Computer Management System. Final authority to determine if an allegation should be investigated as a formal complaint or internal investigation shall rest with the Chief. All Supervisor Inquiry Investigation reports shall be maintained for a period of not less than five (5) years. (Penal Code 832.5)

A matter will not be handled as a Supervisor Inquiry Investigation, and a formal Complaint investigation or Internal Investigation will be opened, when the allegation of misconduct or neglect of duty may result in discipline. If at any

time, during a Supervisor Inquiry Investigation, a supervisor believes that the officer could be disciplined for his/her actions, the supervisor should cease with any further questioning and a formal Citizen Complaint or Internal Affairs Investigation will be opened.

SUPERVISOR INQUIRY INVESTIGATION FORM

A supervisor who completes a Supervisor Inquiry Investigation shall document the Inquiry on the Supervisor Inquiry Investigation form (SII). The supervisor will include a synopsis of the issue or concern and any resolution, including any corrective action taken.

SUPERVISOR INQUIRY INVESTIGATION

A Supervisor Inquiry Investigation ordinarily should be resolved within **30 days** of the date the Inquiry was initiated.

Once a Supervisor Inquiry Investigation is completed and the matter resolved, the Personnel & Training Unit will notify the employee of the conclusion. The investigator shall route the form through their chain of command for approval. The Personnel and Training Unit will maintain a copy of the report for a period of five calendar years from the date of the Inquiry. All Supervisor Inquiry Investigations will be given an investigation number and the information will be entered into the IAPRO Computer Management System.

Once a Supervisor Inquiry Investigation is resolved, the contents and resolution of an Inquiry will not be used for disciplinary action or used to determine progressive discipline in subsequent sustained complaints or Administrative Investigations. Inquiries will not be referred to in annual appraisals unless the behavior is chronic and/or there is independent corroboration of the incident.

The utilization of this process does not imply that the subject employee has in fact committed any transgression described by the person making the Inquiry. An employee shall have the option of requesting a formal investigation of the incident if he or she desires.

INTERNALLY GENERATED INVESTIGATIONS

Each and every employee of the Department shares in the responsibility to ensure the highest standards of integrity and conduct. It shall be the responsibility of every member to immediately report misconduct, which he or she observes or which comes to his or her attention.

Any supervisor in the Police Department has the authority to initiate an Administrative Investigation based on information received from within the Police Department that cause him/her to believe that a violation of the Palo Alto Police Department Policies, City of Palo Alto Merit Rules and Regulations, or any Federal, State or local laws may have occurred. The Chief may direct a department employee to initiate an Administrative Investigation. The Chief has the authority to initiate an Administrative Investigation when a complainant has withdrawn a complaint or has failed to cooperate with investigators and

he/she believes that additional investigation is warranted.

CONDUCTING ADMINISTRATIVE INVESTIGATIONS

The purpose of an Administrative Investigation is to discover and document all relevant information or evidence in order to conclusively prove or disprove an allegation of misconduct or neglect of duty.

Administrative Investigations may be initiated internally or in response to a complaint from the public. Investigations will occur to determine whether there was a violation of the Palo Alto Police Department's Policies and Procedures, City of Palo Alto's Merit Rules and Regulations, or any Federal, State or local laws. Administrative Investigations may include but are not limited to the following allegations:

- unlawful arrests, searches or detentions
- excessive force
- unsafe vehicle operations
- officer-involved shootings
- damage and/or civil claims against the Police Department
- discrimination or harassment
- rude or unprofessional conduct
- failure to comply with policies and procedures
- insubordination
- neglect of duty
- conduct unbecoming an officer/employee
- dishonesty

To avoid any conflict of interest, an Administrative Investigation shall not be conducted by an **employee or supervisor who is involved in the allegation or incident that is being investigated.**

In all cases, an Administrative Investigation shall be completed in a fair, timely and impartial manner. Due process rights of the involved employee(s) will be respected at all times.

When conducting an investigation into possible violations of Department policies and procedures, City of Palo Alto Merit Rules and Regulations or other alleged misconduct, the assigned investigator will obtain statements from involved parties and witnesses, collect all relevant evidence, and thoroughly document the results of the investigation.

INVESTIGATIVE STEPS

In an Administrative Investigation, the legal standard of proof is a preponderance of the

evidence (51% threshold). The following steps should be taken when conducting Administrative Investigations:

- Review the complaint or allegation.
- Determine what rule or regulation, if any, may have been violated if the complaint or allegation is found to be true.
- Identify what interviews need to be conducted concerning complaining parties and witnesses.
- Collect all evidence relating to the matter. This may include photographs, medical reports, police reports, Communications records, duty rosters, disability reports, diagrams of scenes, or photographic and video evidence. Book large items of evidence into the Police Department's property room. Occasionally situations arise where complaining parties have visible injuries but are not able to come to the Police Department. They may be incapacitated at home, in the hospital, or in jail. In these situations, it may be necessary to go to the complainant as soon as practical to take statements and photograph injuries.
- Obtain any background information regarding the complainant that might be relevant.
- Interview witnesses, including non-accused Police Department personnel. Interviews should be conducted individually using open-ended questions.
- Make reasonable attempts to interview civilian complainants or witnesses, to include those represented by counsel. In such cases, the City Attorney should be consulted as appropriate.
- Interview accused Police Department personnel consistent with statutory and other procedural safeguards.

GOVERNMENT CODE SECTION 3300

If the Department employee is a sworn peace officer, he/she will be advised that the rights afforded him/her by Sections 3300 through 3311 of the California Government Code are in effect.

The following procedures shall be followed with regard to the accused employee. Although these Government Code Sections specifically apply to sworn Police Officers, **all employees** of the Palo Alto Police Department will be provided these protections:

- a) Interviews of accused employees shall be conducted during reasonable hours and, if the employee is off duty, the employee shall be compensated. (Government Code Section 3303(a)).
- b) Subject officer interviews should be conducted by two investigators. No more than two interviewers may ask questions of an accused employee. (Government Code Section 3303(b)).

- c) Prior to any interview, an employee shall be informed of the nature of the investigation. (Government Code Section 3303(d)).
- d) All interviews shall be for a reasonable period and the employee's personal needs shall be accommodated. (Government Code Section 3303(d)).
- e) No employee shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. However, any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively or be subject to discipline for insubordination. Once again, nothing administratively ordered may be provided to a criminal investigator. (Government Code Section 3303(e)).
- f) Absent circumstances preventing it, the interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview. (Government Code Section 3303(g)).
- g) If the allegations involve potential criminal conduct, the employee shall be advised of his/her Constitutional Rights pursuant to Lybarger. This admonishment shall be given administratively whether or not the employee was advised of these rights during any separate criminal investigation. (Government Code Section 3303(h)).
- h) All employees subjected to interviews that could result in punitive action shall have the right to have an uninvolved representative present during the interview. (Government Code Section 3303(i)).
- i) All employees shall provide a complete and truthful response to questions posed during interviews.
- j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation. (Government Code Section 3307).

NOTIFICATION OF EMPLOYEE

When a complaint has been filed against a Palo Alto Police Department employee, the employee may be notified in writing of the complaint and informed that an investigation will be conducted prior to the employee interview. This notification will be done by the Personnel and Training Unit or the assigned investigator. If the nature of the allegation dictates that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed or formally charged.

When the investigator is prepared to interview the involved Department employee, the employee will be given a memorandum noting the date, time and location for the interview. This notification will be in compliance with the requirements of California

Government Code 3303, Sections (b) and (c). Every effort will be made to conduct the interview during the employee's normal duty hours. A copy of the notice or a notation of the date and time of verbal notification will be retained with the case file. The notifications will be sent by the assigned investigator.

REPRESENTATION DURING INTERVIEWS

Employees may have a representative or an attorney present during the interview process. The employee is allowed to confer with his/her representative and the representative is allowed to confer with the employee. The employee, however, must be the one to answer the investigator's questions. One representative will be allowed to be present and the representative shall not be a person subject to the same investigation.

PROVIDING OF REPORTS/EVIDENCE/VIDEO PRIOR TO INTERVIEWS

In the interest of conducting an unbiased investigation, statements of complainants and witnesses, evidence collected, and investigator's reports are deemed confidential and will not be provided prior to the interview of an employee under investigation. The employee shall be provided with information regarding the nature of the investigation prior to the interview to aid in the employee's recall of the incident and to provide for a more accurate statement. Prior to being interviewed the employee shall have the opportunity to review any associated police reports and the employee's own associated field-based video footage, except under rare circumstances (e.g., a parallel criminal investigation) where such review would jeopardize the integrity of the investigation. This determination shall be made by the Chief. Should a second interview be necessary with the person under investigation, a recording or a transcript of his/her first interview will be provided to him/her prior to the second interview.

CONDUCTING INTERVIEWS OF EMPLOYEES

If there is a possibility the Department employee's conduct is criminal in nature, the employee will first be given the Miranda Warning. The Grant of Immunity Admonition, also known as the Lybarger Admonition, will be given to **all sworn employees, (subject and witness employees). Non-sworn employees will NOT be given the Lybarger Admonishment.** The Lybarger form should be signed by the involved employee and attached to the investigation.

All administrative interviews will use the following format:

- Date, time and location of the interview;
- Note that the interview is being recorded;
- Who is conducting the interview, their current assignment, and their rank;
- All persons present during the interview;

- The purpose and nature of the interview;
- The Grant of Immunity (Lybarger) Admonition or Notice of Investigation.

RECORDING INTERVIEWS

Unless a complainant or witness refuses, interviews of all persons involved in an Administrative Investigation will be audio and/or video recorded. Since Internal Affairs investigations are administrative in nature, recording conversations is not allowed without the knowledge of the person(s) being recorded. The recording device will be kept in open view. Breaks taken during the interview should be noted verbally with start and stop times. All audio files should be retained with the case file. If requested, an employee who is being interviewed will be provided with a copy of his/her interview at the conclusion of the meeting. The employee may choose to have his/her own recording device present during the interview.

When members of the public decline to be recorded or are unavailable for an interview, a brief written statement of the incident about which they are complaining is recommended. It will also be noted they would not allow their statement to be recorded.

DOCUMENTING THE INVESTIGATION

All complaint investigations, regardless of the type, will be documented in a written report. The Administrative Investigation of a Department employee's conduct must be completed in a fair and impartial manner. The written report should be based upon the factual information learned during the investigation, written in an objective manner.

INVESTIGATIVE REPORT FORMAT

All Administrative Investigations will be reported utilizing the following headings:

- **BACKGROUND** – This section of the investigation should provide a statement of the events that took place or were in progress at the time of the alleged incident and a summary of what the complainant alleges. The statement should accurately portray the scene. It should include the location, date, time and identity of all persons present.
- **INVESTIGATION** – This is the substance of the investigation, including **statements of witnesses and accused employees**. It should include enough pertinent facts to enable the reader to get a full understanding of the complaint and subsequent investigation. In major investigations, all critical interviews should be transcribed and attached to the investigation. All other statements can be paraphrased by the investigator with reference given to the recorded statement.
- **VIOLATION / APPLICABLE AUTHORITIES** – This section will contain a listing of all alleged violations and applicable authorities.

- **ANALYSIS** – This section analyzes each of the alleged violations in light of the evidence collected in the investigation. It answers the question: Does a preponderance of the evidence prove or disprove a violation of the applicable authorities? The analysis should address all major issues or questions relevant to the investigation and should address all discrepancies and/or inconsistencies. Supervisors should refrain from offering hypothetical explanations of, or justifications for, officer conduct not provided by involved officers or witnesses, or readily apparent from available evidence.
- **ATTACHMENTS** – This section will include written and legal documents, photographs, correspondence and material relating to the investigation.
- **CONCLUSIONS** – An application of the factual findings to the allegations, including supporting analysis. The conclusions will include references to the appropriate sections of the Department Policy Manual, other policies and procedures, City of Palo Alto Merit Rules and Regulations, or Federal, State or local law. The conclusions as to each allegation will be based on a preponderance of the evidence standard. The conclusions will be: exonerated, unfounded, not sustained, sustained, or no finding.
- **FINDINGS** – Every Personnel Investigation will be concluded with one of the following dispositions for each charge indicated in the complaint:
 - **Exonerated** – The acts did occur but were consistent with Police Department's policies and procedures.
 - **Unfounded** – The investigation revealed the allegation was false or not factual or the employee was not involved.
 - **Not Sustained** – The investigation failed to disclose evidence sufficient to prove or disprove the allegation(s) by a preponderance of the evidence.
 - **Sustained** – The investigation disclosed evidence sufficient to prove the allegation(s) by a preponderance of the evidence.
 - **No Finding** – The complainant failed to provide necessary information to further the investigation; the complainant failed to cooperate sufficiently with the investigation in order to complete it; the investigation revealed that another agency was involved and the complaint or complainant has been referred to that agency; or the complainant wishes to withdraw the complaint.

CASE MANAGEMENT

Every investigator or supervisor assigned to investigate a personnel complaint shall proceed with due diligence. Recognizing that factors such as witness availability and the complexity of allegations will affect each case, every effort should be made to complete each investigation within thirty **(30) days** of receipt. If the timeline cannot be followed, the investigator must communicate no less than every 45 days the status of the investigation to his/her division coordinator. Additionally, the subject employee(s) should be regularly updated as to the status of the investigation if it cannot be completed within 30 days. The assigned investigator is responsible for completing the POBAR Case Time Log, which is included in the complaint packet.

CASE FOLDER

All formal investigation documents will be maintained in a case folder and/or on a secure electronic format. **No investigation should ever be saved on the shared hard drive of a computer.** The assigned investigator shall maintain the case folder in a secured or locked location as long as the case remains open. The case folder will include the following items:

- original investigative reports;
- original documents and/or photographs;
- original administrative correspondence; or
- any other items of evidentiary value.

These items will be retained and safeguarded by the case investigator until the investigation is completed. When the investigator completes the investigation, he/she shall forward the investigation through their chain of command for approval. Once the investigation is approved by the Police Chief and a disposition has been determined, the investigator is responsible for forwarding all documents, evidence, cassette tapes, and computer disks to the Personnel and Training Unit. The investigator should shred any and all notes and at **no time** keep any documents relating to the investigation.

COMPUTERIZED INVESTIGATION MANAGEMENT

The Personnel and Training Unit will utilize the IAPRO Computer Management System. This system will document the investigation number, the date the complaint was received, the date the investigation was assigned, the name of the complainant, the assigned investigator(s), the name of employee, the disposition, and the date the investigation was completed. Additionally, IAPRO will contain a list of all internal affairs complaint investigations. At the conclusion of an investigation all documents and/or evidence will be downloaded on to the system and retained pursuant to the Department's Personnel File Policy.

CLOSING COMPLAINTS

When the Chief or his/her designee has finalized a decision regarding a case disposition and concurs with the findings, the Personnel and Training Unit will send the following categories of investigations to the Independent Police Auditor (IPA): Citizen Complaints; Internal Affairs Investigations; Supervisor Inquiry Investigations; and Use of Force Reports involving the use of a Taser, baton, chemical agent, less lethal projectile, firearm, canine, and all cases where the subject's injuries necessitate any medical treatment beyond minor medical treatment in the field. The IPA will review the investigation and either concur or recommend follow-up. The IPA does not provide or suggest recommendations for disciplinary action.

DEPARTMENT EMPLOYEE NOTIFICATION

Once an administrative investigation is completed and filed with the Personnel and Training Unit, a Disposition Notice will be sent to the subject Police Department employee. This notice will identify the findings and/or conclusions of the investigation. A copy of the notice will be retained with the case file.

COMPLAINANT NOTIFICATION

A letter will be mailed to the citizen complainant advising him/her that the investigation has been completed and that a disposition has been reached. This should occur within 30 days of the disposition. The letter will inform the member of the public of the final disposition of the investigation and the restrictions imposed by California Penal Code Section 832.7 and advise him/her to contact the Personnel and Training Unit if he/she has any questions. The Police Department can provide general information regarding the investigation process, but cannot disclose evidence discovered during the investigation or what type of discipline, if any, was imposed. Should a complaining party request a copy of their original written complaint or their taped statements, they will be furnished to them.

COPIES OF AN INVESTIGATION

At no time should an investigator retain a copy of an investigation. All requests for hard copies of an investigation shall be made through the Personnel and Training Unit. The Personnel and Training Unit is responsible for releasing copies of an investigation to authorized personnel. The Personnel and Training Unit will document who the investigation was released to, ensure that the copy was redacted if necessary, and stamp the copy as a controlled document not for duplication. This information will be retained within the IAPRO Computer Management System. If the Personnel and Training Unit gives an employee a copy of an investigation, the employee **shall not** make an additional copy for anyone else. All additional requests for copies must go through the Personnel and Training Unit.

DISCIPLINARY NOTIFICATIONS AND ACTIONS

When an investigation results in findings that the allegations are **sustained** and those findings are finalized, the action will proceed to disposition, including any disciplinary action that may be imposed.

In recommending appropriate discipline, management should obtain background information regarding the subject employee including prior citizen complaints or internal investigations, performance evaluations, and past disciplinary actions which are relevant to the present matter, including prior warnings or notice regarding misconduct or neglect of duty.

Formal discipline consisting of a written reprimand, suspension, demotion, or termination requires due process and the allowance of administrative appeals. In cases involving formal discipline, a "Notice of Intent to Discipline" will be prepared and served. The employee will be provided with a complete copy of the Administrative Investigation, upon request. Such "Notice of Intent to Discipline" letters will be signed by the employee's Division Captain/Coordinator and will be forwarded to the employee.

SKELLY PROCEDURE

The Skelly procedure is an administrative process available to Police Department employees prior to the imposition of any formal discipline. The purpose of the Skelly meeting is for the employee to show cause why the proposed discipline should not be imposed. This procedure is held after the employee is given his/her "Notice of Intended Discipline" letter, which provides a time limit within which to respond and to contest the

intended discipline.

If contested, the employee will be given a time to meet with the Chief and a representative from Human Resources to discuss the matter. Prior to the meeting, the employee will be provided with discovery materials. The employee may have a representative or attorney present during this meeting. In lieu of a meeting, the employee may respond in writing. A final decision as to discipline will be made by the Chief.

The Assistant Police Chief will receive and retain the written decision by the Chief regarding the results of the Skelly meeting and will prepare the Notice of Discipline letter, if appropriate, after the employee has been notified of the results of the Skelly meeting.

After the Skelly process is completed, a final Notice of Discipline letter will be prepared and served to the involved Police Department employee. This Notice of Discipline letter will designate the level of discipline to be imposed and when the discipline will begin. Letters of actual discipline will be signed by the Chief. The Notice of Discipline letter will be placed in the employee's Discipline file by the Personnel & Training Lieutenant and kept for the applicable time.

When possible, the affected employee's chain of command will be notified that a Notice of Discipline letter is forthcoming. This will allow the Division Captain/Coordinator to adjust for orderly staffing.

The employee has a right to appeal from the disciplinary action. Depending on the employee's status and rights under his/her Memorandum of Understanding, the appeal may be according to the City's Merit Rules and Regulations or to arbitration.

CRIMINAL INVESTIGATIONS

Cases involving allegations of criminal misconduct will first be investigated by either our agency or another agency designated by the Police Chief. An assigned department investigator will monitor the Criminal Investigation, and they will obtain a copy of all criminal reports for review.

A Criminal Investigation will always have priority over any Administrative Investigation. When the Criminal Investigation is completed, it will be incorporated into the administrative case. This includes documenting all items of evidence and obtaining copies of interview recordings. This does not mean, however, that an Administrative Investigation must wait for the criminal case to conclude before starting.

Once the Administrative Investigation has begun, information regarding misconduct or other facts surrounding the case **will not flow** from Administrative Investigation to Criminal Investigation. No information or evidence administratively coerced from an employee will be provided to a criminal investigator. An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a civilian and the employee may not be administratively ordered to provide any information to a criminal investigator.

When a criminal investigation is conducted by an outside agency on an employee of the Palo Alto Police Department, the Department will conduct an Administration Investigation into the matter.

Palo Alto Police personnel shall not make any recommendations or otherwise attempt to influence outside police agencies and/or the District Attorney's Office regarding the criminal investigations involving Palo Alto employees.

Any law enforcement agency is authorized to release information concerning the arrest or detention of a peace officer, which has not led to a conviction (Labor Code 432.7(b)). However, no disciplinary action shall be taken against the accused employee based solely on an arrest or crime report. An independent Administrative Investigation shall be conducted based upon the allegation in the report in accordance with Department policy.

ADMINISTRATIVE LEAVE

Administrative Leave is non-disciplinary relief from duty for reasons, which are in the best interest of the City (Merit Rules Section 808) or as necessary for compliance with due process requirements during an Administrative Investigation, which may result in disciplinary action (Merit Rules Section 811). Only a Council-appointed Officer (i.e., city Manager, City Attorney, City Clerk or City Auditor) may authorize Administrative Leave. However, when a complaint of misconduct is of a serious nature or when circumstances practically dictate that it would impose an unreasonable risk to the Department, the employee, other employees or the public, the Police Chief has the authority to impose emergency, non-disciplinary relief from duty, until authorization for Administrative Leave can be obtained. The Department employee will be advised of the reason(s) for this action.

Employees will not act in any official capacity while on Administrative Leave and are to remain available at their residence by telephone or personal contact during working hours, as determined by the Personnel and Training Unit. Any variation from this must be approved by the Personnel and Training Unit. A memorandum explaining these restrictions will be signed by the employee's Division Captain/Coordinator and given to the Department employee at the time they are placed on Administrative Leave. A copy will be included in the Administrative Investigation case file.

In certain circumstances, sworn officers may be directed by the Personnel and Training Unit to surrender their badge, Police Department identification, issued weapon and keys to Police Department facilities. All appropriate personnel in the Police Department will be notified when an employee is both placed on and reinstated from Administrative Leave.

At such time as any employee placed on Administrative Leave is returned to full and regular duty, the employee shall be returned to their regularly assigned shift with all badges, identification card and other equipment returned.

OFFICER INVOLVED SHOOTINGS OR DEATH CASES

In officer involved shootings or death cases, the Police Chief will designate an administrative department employee to respond to the scene, to observe the criminal investigation, conduct an Administrative Investigation, determine adherence to policy, and to report observations to the Chief.

The following incidents will result in a response to the scene by Department Command Staff:

- Whenever an Officer's firearm is discharged and results in injury or death;
- Whenever an Officer's use of force or police action results in death or serious injury;
- When necessary, as determined by the Chief or Personnel and Training Lieutenant;

The Police Chief will be notified immediately of any of these incidents and will then assign an investigator to respond. The responding investigator will monitor the Criminal Investigation. He/she will not interfere with, not get involved with, the criminal investigation. The assigned investigator will inspect the scene and conduct whatever cursory investigation necessary to provide an oral report to the Personnel and Training Unit and the Chief.

When the Criminal Investigation is completed, a separate Administrative Investigation will be conducted and will include an examination of the complete criminal investigation, physical evidence, Coroner's report, policy review, and tactics employed.

A report will be completed using the same Department format as that for all Internal Affairs Investigations. It will document the administrative investigation, any actions taken, and will be reviewed and approved by the Chief.

ADMINISTRATIVE REVIEW OF COMPLAINTS

All findings and conclusions involving misconduct investigations will be reviewed and approved by the Chief or his/her designee. Each case will be forwarded to the Chief through the chain of command from the investigator to the employee's Division Captain/Coordinator to the Chief. The Personnel and Training Unit will then receive the completed approved investigation for filing and notifications.

ADMINISTRATIVE PROCESSES

ACCESS TO INTERNAL AFFAIRS RECORDS

Only those employees of the Police Department authorized by the Chief will be allowed access to Internal Affairs records. Those are:

- **Person Investigated:** Employees may review their own personnel files; however, they may not review any confidential internal affairs records that are not considered to be personnel files.
- **Managers:** Any sworn manager recommending discipline may review another employee's Internal Affairs records for that purpose
- **Outside Request:** Any request by either an outside agency or other source to review an employee's Internal Affairs records by an outside agency must be approved by the City Attorney in accordance with California Penal Code Section 832.7, California Evidence Code Section 1043, or pursuant to a Federal or State Court Order.

- **Police Department's Supervisory Personnel:** Any supervisor or manager may review an employee's Internal Affairs file on a "need to know" basis with the prior approval of the Personnel and Training Unit.

The Personnel and Training Unit will ensure that the Police Department employee reviewing the file is authorized to do so.

CONFIDENTIALITY OF PERSONNEL FILES

All investigations of personnel complaints shall be considered confidential sworn and non-sworn personnel files. The contents of such files shall not be revealed to other than the involved employee or authorized personnel except pursuant to lawful process.

In the event that an accused employee (or the representative of such employee) knowingly makes false representations regarding any internal investigation and such false representations are communicated to any media source, the Department may disclose sufficient information from the employee's personnel file to refute such false representations. (Penal Code 832.5)

All formal citizen complaint investigations and supervisor inquiry investigations shall be maintained for a period of not less than five (5) years. (Penal Code 832.5)

CITY ATTORNEY'S OFFICE

The City Attorneys Office will be contacted by the Personnel and Training Unit whenever there is a legal or procedural question involving an Administrative Investigation. In cases of formal discipline where there is a likelihood of suspension, demotion, or termination, a complete copy of the investigation and draft Notice of Intended Discipline will be routed to the City Attorney's Office for review and opinion.

The City Attorney's Office also gives assistance with formulating disciplinary settlement agreements, monitoring Skelly meetings, and defending arbitration actions.

FITNESS FOR DUTY EVALUATION

When a Palo Alto Police Department employee has been relieved from duty for physical or psychological reasons, a fitness for duty evaluation may be conducted at the direction of the Chief or his/her designee. This evaluation will be coordinated and monitored by the Personnel and Training Unit. Any medical bills for fitness for duty evaluations will be approved by the Personnel and Training Unit.

The evaluations should only be undertaken where there are severe job related physical or psychological factors. Refer to PAPD policy 1032- Fitness for Duty for specific information.

In the event that a Department employee refuses to submit to a fitness for duty evaluation, the Personnel and Training Unit will officially order him/her to undergo the

evaluation. A continued refusal will be treated as a violation of a direct order and a disciplinary investigation can be instituted.

PITCHESS MOTION

A Pitchess Motion (California Evidence Code Section 1043) is a legal process to access an officer's personnel records. The Personnel and Training Unit is the Department's designated Pitchess Officer. It is his/her responsibility to work in cooperation with the City Attorney's Office in seeing that all Pitchess Motions are handled as prescribed by law.

POLYGRAPH EXAMINATIONS

As per Section 3307 of California Government Code, personnel involved in internal affairs investigations cannot be compelled to take a polygraph examination. A polygraph examination may be offered in the course of the investigation; however, refusals to take an examination will not be noted in any reports, nor used against an employee at any administrative hearings.

RECORDS RETENTION

Documents involving an Administrative Investigation will be maintained according to the records retention policies of the Palo Alto Police Department. At the conclusion of the time frames outlined in PAPD Policy 1026 Peace Officer Personnel Files, all Internal Affairs records, and corresponding documentation in the Personnel File may be purged/sealed unless designated otherwise by the Chief or his/her designee.

SEARCHES

Any employee exhibiting objective symptoms of intoxication or influence and any employee involved in a shooting, death from police action or injury/fatal traffic collision may be administratively ordered to submit to a blood, breath, or urine test. The results of such compelled testing shall be restricted to the Administrative Investigation.

Any employee may be compelled to disclose personal financial information pursuant to proper legal process; if such information tends to indicate a conflict of interest with official duties; or, if the employee is assigned to or being considered for a special assignment with a potential for bribes. (Government Code 3308)

Employees shall have no expectation of privacy when using telephones, computers, radios or other communications provided by the Department.

Assigned lockers and storage spaces may only be administratively searched in the employee's presence, with the employee's consent, with a valid search warrant or where the employee has been given reasonable notice that the search will take place. (Government Code 3309)

All other departmentally assigned areas (e.g. desks, space, assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes. (e.g. obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

In all other cases where there is doubt as to whether a particular search would be permissible without a search warrant or valid consent, the City Attorneys Office will be contacted for advice.

TRAINING

New supervisors should, when possible, attend a P.O.S.T.-approved Internal Affairs Investigator's course. To facilitate better investigations at the Division level, the Personnel and Training Unit will arrange periodic training for all Sergeants and Lieutenants.