

	<b>Abilene Police Department Operating Procedures</b>		
	Subject: <i>Office of Professional Accountability</i>	Issued: <b>12/16/2022</b>	TBP: 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 2.10,

## **Office of Professional Accountability**

The purpose of the Office of Professional Accountability (“OPA”) is to investigate all allegations of misconduct by any employee of the Department in order to meet the following objectives:

- A. Protection of the public;
- B. Protection of the Department;
- C. Protection of the employee;
- D. Removal of unfit personnel; and
- E. Ensuring due process.

## **Misconduct Defined**

For the purposes of this Chapter, “misconduct” is defined as:

- A. Conviction of a criminal offense;
- B. Violation of a federal law, state law, or City ordinance; or
- C. Violation of Department or City of Abilene operating procedures, memorandums, or direct orders.

## **Probationary Officers Exempt**

The procedures set forth in this Chapter do not apply to probationary officers.


## **Structure and Responsibilities**

The Office of Professional Accountability (“OPA”) is a special unit of officers who are assigned full-time to other divisions within the Department.

- A. The OPA shall be commanded by a lieutenant. The OPA Commander shall be appointed by, and directly accountable to, the Chief of Police.
- B. The OPA shall consist of sergeants who are appointment by the Chief of Police.

The OPA Commander has the following duties and responsibilities:

- A. Direct and coordinate the resources and personnel of the OPA.
- B. Provide guidance and direction to ensure that OPA personnel comply with policies, procedures, and rules of the Department.
- C. Keep the Chief of Police informed of OPA operations.
- D. Maintain the files and records of the OPA in a secure manner.
- E. Coordinate, supervise, conduct internal investigations, as necessary, and examine the results for content and thoroughness.

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The special assignment investigators/supervisors (OPA Investigators) have the following duties and responsibilities:

- A. Inform the OPA Commander of all cases that are assigned.
- B. Conduct any necessary follow-up investigation of all assigned cases.
- C. Compile detailed, written reports on each investigation conducted, which shall include a complete, impartial description of the facts and circumstances of the case, as revealed by the investigation.
- D. Prepare and facilitate all investigative tests, including, but not limited to, blood, breath, polygraph, and psychological.
- E. Coordinate with the appropriate investigative section when criminal charges are being investigated.
- F. Maintain the security of all files and records under their care.

### **File Maintenance and Security (TBP 2.09)**

The OPA Commander is responsible for the maintenance of all files and copies of completed investigations.

An electronic folder of each investigation shall be maintained and shall contain the following information:

- A. Date of complaint;
- B. Name, rank, and ID number of the employee;
- C. Name of complainant;
- D. Summary of complaint;
- E. Disposition of investigation;
- F. Appeal of disposition, if any; and
- G. Final action taken, if any.

The files and records shall be kept separate from all other Department files and shall be maintained according to State and City of Abilene record retention requirements. The files shall be marked and designated as confidential and shall be secured at all times within the Office of Police Administration. Access to the files shall be limited to the following:

- A. Chief of Police or Assistant Chiefs of Police;
- B. Attorneys employed by the City Attorney's Office;
- C. Officers assigned to the OPA, as necessary to complete their assignment; and
- D. Any other person, as determined by the Chief of Police.

Requests for information should be forwarded to the Chief of Police and the City Attorney's Office.

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### **Case Inception (TBP 2.07)**

Allegations of employee misconduct (complaints) shall only be accepted from persons with standing. If a person lacks standing, they should be encouraged to have the alleged victim contact the Department in order for the complaint to be investigated.

There are three (3) requirements for standing:

- A. The complainant suffered an injury or an invasion of a legally protected interest;
- B. The alleged conduct of the employee is the cause of injury or invasion of a legally protected interest, not the result of a third party's actions; and
- C. The complaint is based on reasonable, factual information.

There is an assumption of standing for the following individuals:

- A. A Department employee alleging a violation of a Department or City of Abilene policy;
- B. The Chief of Police, when necessary to achieve the objectives of this Chapter; and
- C. The Director of Administrative Services when there has been a sustained violation of the City Harassment Policy.

Complaints shall be accepted from any source, regardless of whether that source is internal or external.

Complaints may not be investigated more than 180 days after the alleged incident occurred, except in the following circumstances:

- A. If the alleged misconduct is criminal in nature, the complaint may be investigated within 180 days of the discovery of the criminal conduct, regardless of when the conduct occurred.
- B. The complainant can show good cause for not making the complaint earlier.
- C. The Chief of Police directs the complaint to be accepted.

Complaints shall be accepted by any supervisor within the Department. Complainants should never be denied or asked to come back at a later time.

Other considerations regarding complaints:

- A. Complainants should be encouraged to appear in person at the Police Department.
- B. Complainants should be encouraged to provide a written affidavit detailed the employee's alleged misconduct. The complaint should be signed by the person making the complaint. Electronic signatures shall only be accepted if the source of the signature can be verified.

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- C. If the complainant cannot or will not appear in person at the Police Department, the intake supervisor shall complete as much of the Complaint Intake Form as possible. The supervisor taking the initial complaint shall inform the complainant that they must provide a signed, written statement before the complaint can be investigated, unless otherwise directed by the Chief of Police. The completed Complaint Intake Form shall be forwarded to the appropriate supervisor for follow-up and should contain a notation indicating that the complainant has been informed about the need for a signed, written statement before the complaint can be investigated.
- D. Complaints received via the Citizen Complaint/Commendations Form shall be routed to the Executive Officer to the Chief (Executive Officer). The Executive Officer shall ensure the Citizen Complaint/Commendation Form is complete, confirm the validity of the complaint, and, if deemed necessary, route the Form to the proper supervisor for a follow-up investigation. The Executive Officer shall also ensure that a copy of the Citizen Complaint/Commendation Form is placed on file.
- E. The Executive Officer may investigate initial complaints, or any other complaint as determined by the Chief of Police. All signed, written complaints that are not investigated by the Executive Officer shall be forwarded to the employee's commander or the Internal Affairs Division, as determined by the Chief of Police.
  - 1. The original copy of the complaint shall be maintained by the Executive Officer.
  - 2. A copy of the complaint shall be forwarded to the Chief of Police or the employee's commander, depending on the classification of the complaint.
  - 3. All signed, written complaints shall be investigated by the employee's commander, or, if appropriate, the Internal Affairs Division. The employee's commander shall ensure the complaint is properly investigated, documented, and forwarded to the appropriate Assistant Chief of Police upon completion.

**Complaint Classification (TBP 2.06)**

Complaints shall be classified as either Class I or Class II:

- A. Class I complaints
  - 1. Deviation from the Use of Force Policy
  - 2. Criminal activity
  - 3. Serious misconduct
  - 4. Abuse of authority
  - 5. Death of any person while in police custody
  - 6. Violations of City of Abilene policies regarding harassment or sexual harassment
- B. Class II complaints
  - 1. Any type of harassment not included above
  - 2. Discourtesy
  - 3. Failure to take prompt and/or effective police action
  - 4. Minor misconduct
  - 5. Improper police procedures
- C. Complaints not clearly classified should be referred to the OPA Commander or Chief of Police for appropriate classification.

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- D. Minor employee errors, omissions, tactical errors in the field, or work deficiencies that are promptly brought to the attention of a supervisor may not need to be entered on a Personnel Complaint Form. Complaints of this nature may be resolved through counseling, training, supervisory documentation, and/or performance improvement programs.

### **Case Assignment (TBP 2.06)**

Class I complaints shall be immediately forwarded to the Chief of Police for assignment and investigation by OPA personnel. The Chief of Police shall notify the OPA Commander that an investigation is needed.

Class II complaints shall be forwarded to the commander of the subject employee for investigation. The employee's commander shall then assign a supervisor to investigate the complaint. With the approval of the Chief of Police, or his/her designee, a Class II complaint may be forwarded to the OPA for investigation.

The Chief of Police may conduct an investigation on any matter related to Department personnel in addition to, or in lieu of, the procedures set forth in this Chapter.

Regardless of whether it is a Class I or Class II complaint, the investigating supervisor shall notify the complainant of the final result of the investigation either in person, by telephone, via registered mail, or by other accepted electronic methods (TBP 2.10).

### **Investigation of Class I Complaints (TBP 2.04)**

#### **OPA Investigations**

OPA investigations are subject to the following guidelines:

- A. The OPA investigator shall deliver a signed copy of the complaint to the subject employee as soon as possible. The OPA Investigator shall make every effort to interview the complainant, if known, and obtain a signed, written statement.
- B. The OPA Investigator shall then interview the subject employee, any other employee(s) involved, any witness(es), and any other person whose statements may assist in the investigation of the case. Signed, written statements should be obtained from any source with relevant information. The interview(s) may be recorded and transcribed at the discretion of the OPA Investigator.
- C. Civilian personnel are at-will employees and shall receive an Order of Non-Discussion form informing them that, as a civilian employee, they are not afforded the protections provided to sworn personnel under Civil Service or the Local Government Code.

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## **Administrative Investigations**

Administrative investigations are subject to the following guidelines:

- A. An employee may be compelled to answer questions or take tests during an Administrative investigation where the investigation relates to on-duty conduct or off-duty conduct affecting duty performance. Refusing to comply may be grounds for dismissal from the Department as conduct prejudicial to good order or insubordination. If the employee is compelled to answer questions or take tests, any information gained is protected under *Garrity v. New Jersey*, 385 U.S. 493 (1967).
- B. Upon recommendation of the Chief of Police, the OPA Investigator may order the employee to submit to a polygraph examination concerning the case. However, when a citizen complaint is the basis for the investigation, the conduct complained of is non-criminal, and no corroborating information has been discovered, the employee may not be required to submit to a polygraph examination, unless the citizen also submits to a polygraph examination and signs a formal complaint.

## **Criminal Investigations**


Criminal investigations are subject to the following guidelines:

- A. For complaints alleging criminal violations, the investigation should be conducted by the appropriate investigative division within the Department, or by an outside agency if the Chief of Police deems it appropriate.
- B. At the conclusion of the criminal investigation, the OPA Investigator shall be provided with the complete criminal investigation. The OPA Investigator shall then conduct any follow-up investigation necessary under the guidelines of an Administrative investigation.
- C. The Chief of Police may order an OPA Investigator to conduct an Administrative investigation concurrent with the criminal investigation. If this occurs, separate investigators shall be assigned to the criminal investigation and Administrative investigation, in order to protect any compelled information.

## **City of Abilene Harassment or Sexual Harassment Policy Investigations**

City of Abilene Harassment or Sexual Harassment Policy investigations are subject to the following guidelines:

- A. Any complaint involving potential violations of the City of Abilene Harassment or Sexual Harassment Policies shall be referred to the Director of Human Resources for investigation.
- B. At the conclusion of the investigation by Human Resources, an OPA Investigator shall be provided with the complete report and any findings. The OPA Investigator shall then conduct any follow-up investigation necessary under the guidelines of an Administrative investigation.
- C. The Chief of Police, after consultation with Human Resources and the City Attorney's Office, may order the OPA to conduct an Administrative investigation concurrent with the Human Resources investigation.

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**For Class I complaints investigated by the OPA:**

- A. The OPA Commander shall forward the completed investigation to the appropriate Assistant Chief of Police, who shall then forward it to the Chief of Police.
- B. The Chief of Police shall either concur with the findings, not concur with the findings, and/or request further investigation regarding the complaint.
- C. Upon receiving the Chief’s classification of sustained allegation(s), the subject employee may elect to have the Chief of Police initiate selection of the Professional Accountability Complaint Review Board (the “Board”) or elect to have the Chief of Police determine final disposition (e.g., discipline, training, etc.).
- D. Prior to the formal administration of discipline, the subject employee shall have an opportunity to present to the Chief of Police any information that the employee feels is relevant to the investigation that may not have been disclosed in the initial interview(s). This hearing should be conducted in accordance with the guidelines established by *Cleveland Board of Education v. Loudermill*, 470 U.S. 523 (1985).
- E. Class I complaints should generally be completed no later than 120 days from the date the subject employee is notified of the complaint, recognizing that any suspension must be served within 180 days of the occurrence of the misconduct. If an investigation involves criminal misconduct, the procedures set forth in Texas Local Government Code Chapter 143.052 shall apply.
- F. Class I complaints should not be entered into the Performance Tracking System (“PTS”), unless it is later determined to be a Class II complaint.

**Completion of a Class I Complaint Investigation**

If, during the investigation of the initial allegation(s), it is disclosed that other misconduct may have taken place, this misconduct shall also be investigated and reported. A revised complaint shall be written, and the subject employee shall be notified of the revised complaint.

The OPA Investigator shall complete the investigation and submit a confidential report to the OPA Commander in a format acceptable to the Chief of Police. The report shall contain, at a minimum, the following:

- A. The allegation(s);
- B. Investigative summary;
- C. Conclusion; and
- D. Recommendation(s).

The investigative recommendation(s) made by the OPA Investigator shall be classified in one of the following ways:

- A. Sustained – The evidence supports the allegation of misconduct.
- B. Unfounded – The evidence disproves the allegation of misconduct.
- C. Exonerated – The evidence supports factual occurrence, but the conduct does not appear improper.
- D. Not Sustained – There is insufficient evidence to either prove or disprove the allegation of misconduct.

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### **Investigation of Class II Complaints (TBP 2.06)**

On receipt of a Class II complaint, the commander of the subject employee may direct a supervisor under their command to investigate the complaint. The supervisor shall interview any witnesses and/or officers and obtain any necessary statements. The supervisor shall complete the investigative summary by entering it into PTS and make a recommendation to his/her commander according to the procedures set out in this section. All Class II complaints shall be entered into PTS, unless the Chief of Police approves a written request for omission.

- A. If, at any point during a Class II complaint investigation, it appears the employee's commander/manager will be recommending disciplinary action higher than a letter of reprimand, the employee's commander/manager shall consult with the Chief of Police to determine if the matter warrants an investigation by the OPA. If it is determined that the matter warrants an investigation, the current investigation by the employee's commander/manager should be stopped and forwarded to the OPA for completion.
- B. Class II complaint investigations should generally be completed no later than sixty (60) days from the date the employee is notified of the complaint (TBP 2.05).

### **Safe Environment**


In order to promote a safe environment, the Chief of Police, or his/her designee, may direct any employee to be unarmed during interviews or other investigative processes. Failure of the employee to follow such order shall result in a charge of insubordination.

### **Professional Accountability Complaint Review Board (TBP 2.08)**

The Professional Accountability Complaint Review Board (Board) shall be initiated by the Chief of Police upon request of the sworn employee. The Board shall consist of five (5) members and shall be selected in the following manner:

- A. The Chairman of the Board (Chairman) shall be appointed by the Chief of Police.
- B. The sworn employee shall select the second member, who may be any sworn employee not involved in the investigation.
- C. The OPA Commander shall identify the three (3) remaining Board members as follows:
  1. Record on separate pieces of paper the name of each sworn member of the Department who is eligible for serve as a Board member.
  2. Place the individual pieces of paper in a container and draw from the container the three (3) names of officers to serve. The drawing shall occur in the presence of the subject employee or his/her representative.



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The following officers are not eligible to participate as Board members:

- A. Chief of Police;
- B. Assistant Chiefs of Police;
- C. OPA personnel;
- D. Any officer involved in the alleged incident(s);
- E. Co-workers within the immediate company, squad, or unit of the subject employee;
- F. Officers of lesser rank than the officer investigated; and
- G. Probationary officers.

The Board has the following duties and responsibilities:

- A. Objectively examine the facts presented; and
- B. Develop recommendations for the Chief of Police regarding correcting the cause, reducing the likelihood of reoccurrence, and appropriate discipline.

Board Format – The Chairman shall call the hearing to order and proceed in the following manner:

- A. The Chairman shall inform the subject employee of the allegation(s) and instruct the Board members as to their duties and responsibilities.
- B. The OPA Investigator shall present a summary of the investigation to the Board and the subject employee.
- C. Employee(s) with relevant information may be called to provide testimony by Board members or the OPA Investigator.
- D. The Board members and subject employee shall be provided an opportunity to question the OPA Investigator.
- E. The subject employee shall be provided an opportunity to make a statement and raise additional matters relevant to the case and potential discipline.
- F. Prior to the Board's discussion of an issue, the Chairman shall instruct the subject employee to leave the meeting.
- G. Board members shall determine if further information is needed. If additional information is needed, the OPA Commander shall make arrangements. The Board shall reconvene as soon as practical.
- H. The Board members shall vote by secret ballot on each classification of allegation(s), followed by a vote to recommend discipline, if any.

Additionally, each Board member shall vote by secret ballot on recommended discipline or corrective action, if applicable.

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### Conclusion of Administrative Duties

- A. The Chairman shall document the recommendation of the Board in the form of a letter addressed to the Chief of Police, which shall reflect the following information:
  1. Name of complainant and the control number of the complaint;
  2. Name and identification number of the employee;
  3. Date of hearing;
  4. List of Board members serving;
  5. Allegations of the complaint;
  6. Recommendations for disciplinary or corrective action;
  7. Recommendations for reviewing any Departmental deficiencies, which may have contributed to the incident; and
  8. The signature of the Chairman.
- B. A copy of this letter shall be provided to the subject employee.
- C. The Chairman shall immediately transmit the Board's recommendations to the commander of the employee for review and comment.
- D. The employee's commander shall attach a Letter of Concurrence/Non-concurrence with any comments and transmit the results to the appropriate Assistant Chief of Police for review.
- E. The Assistant Chief of Police shall attach a Letter of Concurrence/Non-concurrence with any comments and transmit the results to the Chief of Police.
- F. The Chief of Police shall make the final decision as to any discipline or corrective action imposed.

### **Imposition of Discipline – Sworn Employees**

The City Attorney's Office shall prepare a Charge and Specification Letter addressing the conduct violated and stating the proposed discipline.

The Charge and Specification Letter shall be personally served on the subject employee by the Chief of Police or his/her designee.

If an officer is disciplined, the subject employee's decision to accept, respond, or appeal the discipline imposed, shall be conducted pursuant to the Local Meet & Confer Agreement in effect at the time.

### **Imposition of Discipline – Civilian Employees**

Civilian employees who are facing disciplinary action are subject to the City of Abilene's Employee Policy Manual.

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## **Discipline Defined**

Discipline (for the purposes of this document) refers to possible actions that the Chief of Police may take as a result of employee misconduct. Any discipline administered may be appeared by the officer as outlined in the Local Meet & Confer Agreement.

Possible discipline that the Chief of Police may administer includes, but is not limited to, the following:

- A. Indefinite suspension;
- B. Term of suspension without pay; or
- C. Demotion.

Any supervisor within the Department may administer counseling (as defined below) or reprimand to a subordinate within their chain of command.

Counseling – a meeting between the supervisor and employee, which should include a detailed discussion of the event/incident and any recommendations for improvement and/or alternative actions.

Counseling sessions shall be entered in PTS.

Letters of Reprimand shall be presented to the employee in writing and shall:

- A. Identify problematic performance or behavior(s);
- B. City applicable Departmental rules, regulations, or policy;
- C. Provide guidance for improvement; and
- D. Outline potential consequences of recurring misconduct.

All original Letters of Reprimand shall be forwarded to Administration for inclusion in the employee's Departmental personnel file. A copy shall be entered into PTS.