

# TRAINING



# BULLETIN

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Alpha Index: Internal Investigation Manual  
Internal Investigation Procedures

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

## PART III INTERNAL INVESTIGATION PROCEDURE MANUAL

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**REVISION RECORD**

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

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

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

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1	26 Jun 08	NEW	16		
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**“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”**

## INTERNAL INVESTIGATION PROCEDURES

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

### A. **Complaints**

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

### B. **Assignment of Investigations**

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



**C. Investigator Prohibition**

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

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

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

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

**D. Downgrade of Subject Status**

IAD Commander approval is required to downgrade a subject member to a witness as documented by an entry into the Chronological Activity Log. Before making such a determination, the IAD Commander should review the current status of the investigation and consider whether the subject member has been interviewed.

**E. Case File Management**

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

The investigator is responsible for maintaining the Investigative File throughout the



investigation and forwarding the completed investigation to the IAD Administrative Section for merging into the Control File.

3. Additional Documents

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

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

Handwritten notes shall be maintained in the Investigative File. At the conclusion of the investigation, all handwritten notes shall be merged and permanently retained in the Control File.

F. **Recusal Process**

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



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

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

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

- (a) Family relationship;
  - (b) Outside business relationship;
  - (c) Romantic relationship;
  - (d) Personal friendship;
  - (e) Close work relationship (to be determined on a case-by-case basis); or
  - (f) Directly involved in the incident, as defined in DGO M-3.
- 2) If no, the first-level superior shall approve the assignment and document the decision on the Recusal Form.
  - 3) The investigator's first level superior shall ensure the Recusal Form is completed and signed and forwarded to IAD prior to the start of the investigation.
  - 4) IAD shall retain the Form in the Control File.

#### G. Investigation Preparation

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

##### 1. Investigator Responsibilities

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



d) Examine the allegations and identify issues

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

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

If there is evidence of possible criminal misconduct, the investigator shall immediately or as soon as practical, make the proper notifications in accordance with the provisions of Lexipol 611, Criminal Investigation of Department Members and Outside Law Enforcement Personnel,

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



2. Examination of the Scene

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

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

3. Evidence Gathering

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

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

4. Requests for Medical and Laboratory Records

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



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



with the provisions of Departmental General Order E-3.1, DEPARTMENT NOTIFICATION COMPLIANCE VERIFICATION.

- 4) Through a voluntary submission by the subject;
  - 5) In response to a subpoena; or
  - 6) In cooperation with another investigative unit.
- h) The examination of a member's locker or storage space owned or leased by the Department may occur under any of the following circumstances:
- 1) Pursuant to a valid search warrant, or
  - 2) In lieu of a valid search warrant, one of the following conditions must exist:
    - (a) When there has been notification that a search will be conducted;
    - (b) In the presence of the person assigned to the locker or storage space; or
    - (c) With consent of the person assigned to the locker or storage space.

#### H. Responsibilities of Commanders Overseeing Internal Investigations

Commanders and Managers overseeing internal investigations shall review investigative plans and interview questions in cases involving any of the below allegations:

1. Allegations for which the minimum presumed discipline for a first offense is a 30-day suspension, demotion and/or termination;
2. Allegations that require some form of immediate personnel action, such as emergency suspension, administrative leave, or temporary reassignment;
3. Allegations that an OPD employee or member committed a felony or serious misdemeanor;
4. An allegation involving retaliation;
5. An allegation involving discrimination or harassment which would constitute a violation of City of Oakland Administrative Instruction 71;
6. An allegation that an OPD member used his or her position for personal gain;
7. An allegation involving misconduct likely to generate unusual public interest; or
8. Any other allegation that, in the discretion of the Commander or Manager overseeing the internal investigation, warrants consultation with the Office of the City Attorney (OCA) prior to investigative interviews.

The Commander or Manager shall spot-check recorded interviews when any of the above allegations are part of an investigation.



**I. Consultation with the Office of the City Attorney**

1. Investigative Plans and Interviews: Department members investigating any of the allegations listed in Section H, subsections 1-8, above, shall consult with the OCA prior to scheduling interviews. Such consultation shall include the opportunity to review investigative plans and interview questions.

If any of the allegations listed in Section H, subsections 1-8, are discovered after interviews have already been conducted, IAD shall confer with the OCA before scheduling additional interviews.

2. Reports of Investigation: Any investigation sent to the OCA for “Attorney Review” must be completed in its entirety (including a recommended finding), and shall be submitted for the attorney’s review at least 30 calendar days before the date on which IAD intends to present the case to the Chief of Police or his/her designee for approval. The IAD Commander has the discretion to shorten the review period based on the nature, scope, complexity of the investigation, and available and necessary IAD and OCA staff. Any request for a shortened review period must be made in writing. In either instance, IAD shall provide the OCA with an expected date for case presentation to the Chief of Police.
3. Deletion of OCA Comments: If OCA staff provides comments in a draft report of the investigation, only the OCA or IAD Commander can delete such comments.
4. Ongoing Consultation with the OCA: Nothing in this policy shall prevent Department members from seeking advice or assistance from the Office of the City Attorney at any time during an investigation. Personnel should seek advice from the OCA as necessary in the course of an internal investigation.

**J. Interviews**

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



provisions of TB V-C.2, AUTOMATED INFORMATION SYSTEMS.

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

2. Preparing for the Interview

a) Consultation with Commander/Manager and OCA

Determine whether review of interview questions by the Commander or Manager is necessary pursuant to Section H, above. With the Commander or Manager, determine if consultation with OCA is required pursuant to Section I.

b) Location of Interview

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

c) Order of Interviews

The order of interviews is frequently controlled by the circumstances of the investigation and the type of complaint. As a general rule, interviews should be conducted in the following order:

- 1) Complainant (Interviewed as soon as possible, usually during the intake or processing phase.);
- 2) Private person witnesses;
- 3) Employee witnesses;
- 4) Sworn witnesses;
- 5) Subject member or employee.

Maintaining this interview order (1 through 4) usually provides sufficient background information prior to the interview with the subject member.

d) Required Member Interviews

Except in cases of summary findings as provided in DGO M-03, all members who are subjects, witnesses, or were present at the scene of the alleged misconduct, shall be interviewed. All summary finding approvals shall be documented in the body of the report as well as in the CAL.

e) Scheduling

- 1) Conduct interviews in person unless circumstances prevent it. Phone interviews should be the last resort.



- 2) Determine witness and subject availability and schedule appointments for interviews in advance.
  - 3) Don't rush an interview. When an interview is expected to be prolonged, plan for multiple sessions. Conducting multiple interviews will allow the investigator to address any inconsistencies or to clarify information from a previous interview.
  - 4) Interviews of Departmental personnel should be conducted during their regular working hours whenever possible. Schedule interviews with private persons when convenient for the person being interviewed.
- f) Recording Interviews
- 1) All interviews shall be recorded (tape or digital), with minimal "off the record" discussions.
  - 2) When going "off the record," the interviewer shall denote the date and time and the reason for suspending the recorded interview (e.g., for human needs or a request from the representative).
  - 3) If a private person (complainant or witness) refuses to allow the interview to be recorded, explain a recording is needed to preserve the accuracy and nature of the complaint. Appropriately document a refusal to record the statement and proceed with the interview and take a written statement.
  - 4) Members are obligated and required to cooperate and answer questions truthfully under penalty of insubordination.
  - 5) Do not combine interviews with one another on the same side of a cassette tape or on a digital recorder without indexing. Use one side of a cassette for each separate distinct interview or index each interview on a digital recorder.
  - 6) Label recordings
    - (a) Immediately after using each side of a cassette or when the entire cassette tape has been used, clearly mark the cassette with the IAD case number, the date of the interview, the name of the person interviewed on each side, and the name of the primary investigator. The anti-erase tabs shall be removed from the cassette after each side is recorded.
    - (b) If a digital recorder is utilized, the audio file shall be stored and/or transferred to a recordable CD or DVD disk and labeled in the same manner as cassette tapes. Transfer of the audio file to a compact disk soon after the recording is critical to avoid data loss from computer hard drives or data chips.
  - 7) Interviews shall be transcribed at the request of the subject of the investigation, the complainant, command staff, investigator, the Office of



the Inspector General (OIG), or any authorized authority.

- 8) All recordings shall be merged into the Internal Affairs case file which shall be permanently retained.
- 9) Investigators may routinely provide a copy of the interview recording to the interviewee.
- 10) A member or his/her representative may utilize their own recording device during their interview.
- 11) Avoid conducting an interview in a location where loud background noise is present.
- 12) Test the recorder before beginning the interview and have extra batteries on hand.

3. Investigative Approach to Conducting Interviews

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

4. Representation During Interviews

- a) Ensure that every interviewee has read and signed the AB-301, Acknowledgement of Rights and Obligations form (TF-722) because officers (members, and Reserve Officers) and police department employees have a right to representation during an interview when he/she reasonably believes that the interview will result in disciplinary action (Government Code Section 3300 et seq.).

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

- b) Interviewers shall ensure that representatives do not interfere with the interview process and admonish representatives when necessary.

5. Defining Interview Objectives and Preparing a Question List

- a) Before beginning an interview, have a clear understanding of the interview objectives. A typical interview will have one or more of the following objectives:
  - 1) To identify additional subjects and/or witnesses;



- 2) To clarify allegations or information;
  - 3) To resolve any discrepancies and inconsistencies in statements or information; and
  - 4) To obtain information on motive or alibi.
- b) A question list is a “road map” to the interview.
- 1) Arrange questions in chronological order;
  - 2) Make the list easy to read using bullet points or short questions;
  - 3) Highlight key questions;
  - 4) Allow plenty of room to make notes or add questions in the margin;
  - 5) If present, give the secondary investigator a copy of the list for his/her use during the interview;
  - 6) Check off questions as they are covered in the interview; and
  - 7) Review the list before concluding the interview and ensure that all the essential questions have been covered.
- c) Secondary Investigator
- In the event a secondary investigator is utilized during the interview, he/she shall:
- 1) Document the answers in his/her notes;
  - 2) Document the need for additional questions/follow-up;
  - 3) Ensure the notes are shared with the primary investigator; and
  - 4) Include the notes in the case file.
6. General Strategies for Questioning
- a) The primary investigator conducts the interview. The secondary investigator only engages in questioning as needed.
  - b) Try to interview private person witnesses alone. The presence of others may make it difficult for the investigator to get to the truth of the matter. If a witness insists on having another person present during the interview, advise the other person that he/she is only an observer and is not to participate in the interview. In no case should the observer be a witness to the incident being investigated.
  - c) Questions should initially be open-ended and non-leading. Use follow-up questions to obtain admissions and denials.
7. Beginning the Interview
- a) Begin the interview by stating:



- 1) The date, time and the place of the interview;
  - 2) The name and role of each person present in the room;
  - 3) Explain the purpose of the interview;
  - 4) Advise each interviewee if they are a witness or subject officer/employee;
  - 5) Ensure that the subject or witness interviewee has read and understood the TF-722 and that the interviewee has signed and dated the form.
  - 6) For subject officers, if there is no representation present, have the interviewee acknowledge the right to representation and that the interviewee is choosing to proceed without representation.
  - 7) The interview is being recorded.
- b) Allow the person being interviewed to describe what happened in his/her own words, without interruption.
  - c) When a statement is made regarding others, prompt the interviewee to identify and describe each person by name, age, height, weight, race and other physical characteristics, whenever possible.
  - d) Diagrams are often useful during an interview. Allow the interviewee to draw his/her own diagram to avoid claims that a prepared diagram influenced his/her story. Have the document signed and dated by the person drawing it, and include these documents in the case file.
  - e) Cover each allegation and all relevant issues with each subject and witness. The following questions may be asked during the interview, when applicable:

(Explain why or why not)

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

#### 8. Complainant Interviews

- a) Address each allegation in the original complaint during the complainant interview.
- b) Ensure the complainant has no additional allegations before the interview is concluded. Avoid leading questions. The complainant should merely be asked if he/she has anything else to add.



- c) When practical, examine any injuries and have photographs taken, even if the injury is not visible or readily apparent.
  - d) Establish and document the reason for any delays in reporting the incident.
  - e) Attempt to confirm existing or obtain additional witness names, addresses and telephone numbers.
  - f) Determine the availability of the complainant for follow-up interviews.
  - g) Attempt to establish the complainant's motive for making the complaint by asking questions such as:
    - 1) Why are you here today?
    - 2) What is your motive for making this complaint?
    - 3) What do you want done as a result of your complaint?
  - h) Document when a complainant or private person witness is unavailable for an interview, fails to appear for a scheduled interview, or simply refuses to be interviewed. When attempting contact, document due diligence before eliminating the interview.
  - i) At the conclusion of an interview, the complainant should be asked if he/she has any questions or has anything to add that is pertinent to the investigation, but has not been addressed in the interview.
9. Member and Employee Witnesses Interviews
- a) Members shall be required to read and sign the Acknowledgement of Rights and Obligations Form (TF-722) prior to the interview.
  - b) At the conclusion of each interview session, the member interviewed shall be ordered not to disclose any of the information discussed in the interview except to his or her representative or attorney. The investigator shall advise the person interviewed that a failure to adhere to the order may result in a separate charge of insubordination.
10. Subject Interviews
- a) Provide the member with a summary of the complaint as documented on the Complaint Investigation Report (CIR) prior to any interviews. The subject shall not be allowed to read the complaint itself or to review any witness statements prior to the interview. There is no legal requirement to provide investigative materials to the subject prior to the interview. (Pasadena Police Officers' Association v. City of Pasadena (1990) 51 Cal. 3d 564.).
  - b) The investigator shall comply with the provisions of the Public Safety Officers' Procedural Bill of Rights Act, Government Code Section 3300 et seq. when interviewing officers (member, Ranger, or Reserve Officer) and Oakland Police Department members.



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

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

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

- d) Ensure the Acknowledgement of Rights and Obligations Form (TF-722) has been read and signed by the subject before the interview.

- e) The representative:

- 1) May observe all aspects of the interview to ensure that the provisions of the Public Safety Officers' Procedural Bill of Rights Act are met.
- 2) May not interfere with the interview but may raise points of objection.

- f) The interviewer shall note any objections that are not resolved and include those objections in the Report of Investigation.

- g) The interview must be conducted at a reasonable hour, either while on duty or during normal waking hours unless the seriousness of the investigation requires otherwise.

- h) The nature of the investigation, name and rank of the interviewing officer(s), and all other persons to be present during the interview must be disclosed to the person to be interviewed prior to the interview.

- i) No more than two investigators may ask questions during the interview, and only for a reasonable period of time, taking into consideration the seriousness and complexity of the investigation.

- j) All persons shall be allowed to attend to their physical necessities.

- k) No one shall be subjected to offensive language, threatened with punitive action or promised a reward.

- l) The person interviewed has the right to bring a recording device and record all aspects of the interview.

- m) If, prior to or during the interview, it is determined that the person being interviewed may be charged with a criminal offense, the investigator shall immediately terminate the interview and make the proper notification in accordance with the provisions of DGO M-4.1.

- n) When it appears the subject member may be charged with a criminal offense, or if the subject invokes his or her Fifth Amendment rights, the subject shall, prior to providing a statement, be informed of their constitutional rights (*Miranda*) and be provided a *Lybarger* advisement. A *Lybarger* advisement consists of an order requiring the officer to answer questions, the threat of discipline for non-compliance, and the promise that



the statement will not be used against the officer in any criminal and/or civil proceeding.<sup>1</sup> A *Miranda* and *Lybarger* exemplar is located in Training Bulletin V-T.2, reference page IV-9.17.

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

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

#### K. Use of Lie Detection Screening Devices

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

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

- 2. In cases where the integrity of the Department is questioned or where there is direct conflict between subject and witness statements, a polygraph or Computerized Voice Stress Analysis (CVSA) examination may be offered to a member or private person with prior approval from the IAD Commander and in accordance with the provisions of DGO I-12 and Government Code Section 3307.
- 3. A polygraph/CVSA may only be offered after IAD has concluded their initial interview.
- 4. The results of a polygraph/CVSA examination administered to an member, employee, or private person who elects to take an examination, may be reflected in the investigator's report.

#### L. Locker/Storage Space Searches

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

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

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



**M. Investigation Integrity and Confidentiality**

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

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

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

**N. Personnel File Entries**

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

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

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

**O. Report of Investigation**

1. Investigators prepare and include a Report of Investigation (ROI) in the case file once all interviews have been conducted and available evidence has been gathered.

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

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

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

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

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

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



**The ROI shall follow the most recent version of the ROI template (TF-3507) or the ROI Summary Finding template (TF-3508).**

2. Investigators will, with the Commander or Manager, determine if the draft Report of Investigation will be sent to the OCA for review pursuant to Section I.
3. Credibility assessments shall be completed for all persons interviewed to include but not be limited to the following:
  - a) The demeanor of the interviewee while giving testimony and the manner in which he/she testifies;
  - b) The extent of the interviewee's capacity to perceive, to recollect, or to communicate details;
  - c) The extent of the interviewee's opportunity or location to perceive the incident;
  - d) The existence of bias, interest, or other motive;
  - e) Consistency of statements given;
  - f) Verification of facts; and
  - g) Admission of untruthfulness.

**P. Administrative Dispositions**

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

**Q. Summary Findings**

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

1. A Summary Finding shall not be used if the evidence supports a sustained finding.
2. A Summary Finding Memorandum shall be prepared to document when an investigator concludes there is adequate information to determine a Complaint Finding from any of the following:
  - a) Interviews
  - b) Statements taken
  - c) Evidence collected
  - d) Available supporting documents
3. The investigator shall consult with and receive authorization from his or her division commander<sup>9</sup> or Bureau Chief when there is no need to conduct additional interviews or take additional statements from subject members and/or witnesses (including members of the public and members of OPD) in order to determine if there is a preponderance of evidence.

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<sup>9</sup> In OPD, "division commander" is synonymous with the rank of captain. Watch commanders and section commanders are NOT division commanders.



4. All investigators shall seek approval from an IAD Commander **BEFORE** preparing a Summary Finding Memorandum. In cases of Preliminary Inquiries (PIs) into Class II allegations and Division Level Investigations (DLIs), such approvals shall be obtained from the division commander<sup>10</sup> or bureau chief. If the PI or DLI involves a Class I allegation, the division commander or bureau chief shall consult with the IAD Commander and get approval for a Class I Summary Finding. Approval shall be documented in the body of the report as well as in the Chronological Activity Log.
5. A Summary Finding Memorandum shall be forwarded for review and approval in the same manner as a normal internal investigation enumerated in accordance with the provisions of DGO M-03.
6. Credibility assessments shall be completed for all persons interviewed. Factors to consider when assessing credibility include, but are not limited to, the following:
  - a) The demeanor of the interviewee while giving testimony and the manner in which he/she testifies;
  - b) The extent of the interviewee's capacity to perceive, to recollect, or to communicate details;
  - c) The extent of the interviewee's opportunity or location to perceive the incident;
  - d) The existence of bias, interest, or other motive;
  - e) Consistency of statements given;
  - f) Verification of facts; and
  - g) Admission of untruthfulness.

Such credibility assessment shall be performed in all Preliminary Inquiries (PIs) that have been approved for summary finding.

**R. Recommended Findings**

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

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

**S. Administrative Review**

Division-Level

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

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<sup>10</sup> In OPD, "division commander" is synonymous with the rank of captain. Watch commanders and section commanders are NOT division commanders.



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

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

**U. Feedback**

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