

	<b>University of South Carolina</b> <b>Division of Law Enforcement and Safety</b>	
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	<b>Chapter 2:</b> Administration	<b>Policy Number:</b> 2.06
	<b>Subject:</b> Complaint Process and Internal Affairs Investigations	<b>Type:</b> Policy

### **2.06 Complaint Process and Internal Affairs Investigations**

The Division of Law Enforcement and Safety (Division) recognizes the importance of evaluating both positive and negative community feedback. The Division upholds its values by reviewing input to improve operations, directives, and employee performance and will provide a thorough, fair, and expeditious resolution of complaints regarding conduct.

In a commitment to fair and equitable policing, the complaint process has these guidelines:

1. A complaint is a third party (internal or external to the Division) allegation that a Division employee violated a Division directive, University of South Carolina (University) directive, or state/federal law.
2. Any person may file a complaint against the Division and any Division employee. Employees will not interfere with, hinder, or obstruct any person or external agencies from filing complaints. The Division will accept and investigate all complaints regardless of the source, including anonymous complaints.
3. A complaint may be made in person, in writing, by e-mail, through the Division's website Feedback Form, or by telephone.
4. Any employee, unless he/she is the subject of the complaint, may receive a complaint for the Division. An employee who is the subject of the complaint shall refer the complainant to a supervisor. All employees will assist complainants by receiving complaints or providing specific information to complainants on how to file the complaints.
5. Complaints may involve matters in which the employee is identified, unidentified, or unknown. Complaints may include employee conduct related to his/her primary job duties or employment covered by Division Policy 3.30 (Other Employment).
6. Issues involving an employee's failure to complete job duties or minor, singular policy infractions initially identified by an employee's chain of command do not typically constitute a complaint.
7. Employees are guaranteed rights provided by state and federal law, including due process.
8. Employees shall comply with all Division directives and cooperate fully in a complaint investigation.
9. The Office of Compliance and Professional Standards (OCPS) led by their Director is the responsible authority for managing the complaint process and internal affairs investigations. The OCPS Director has authority to report directly to the Chief on internal affairs investigation matters.

### **Receipt of Complaints**

Employees contacted by a complainant should gather the following information relevant to the complaint:

- Nature and date of the alleged incident;
- Place where the incident occurred;
- Name or description of the employee;
- Name and contact information of the complainant; and

- A summary of the complaint.

Whenever feasible, an employee who receives a complaint during regular business hours should route it to the OCPS Director. Any employee may receive the complaint as provided in this policy if neither party is available or a complaint is received outside of regular business hours.

### **Non-Criminal Administrative Investigations**

The Division does not conduct non-criminal administrative investigations for the University. Departments such as the Audit & Advisory Services, Division of Human Resources, Office of Student Conduct, or Office of Civil Rights and Title IX will handle such investigations.

### **Supervisory Response – Temporary Relief from Duty**

Supervisors, at their discretion, may exercise temporary emergency relief from duty per Policy 3.20 (Disciplinary Procedures) or limit an employee's duties/public interaction pending the outcome of an investigation if temporary relief is needed for the benefit of the Division, employee, or complainant. If time permits, this decision should be made in consultation with the Watch Commander or Command Staff member. After any temporary relief, the supervisor will immediately notify his/her Command Staff member unless he/she has already been notified.

### **External Complaints**

After an employee receives a complaint, he/she will enter the complaint information into the Division's Feedback Form. All complaints, including any resolved by supervisors during initial responses, will be documented. The employee will enter complaints even if he/she directed the complainant on methods to file a complaint. In addition to entering a complaint into this form, an employee will notify the OCPS Director by e-mail or telephone call if a complaint alleges serious misconduct, bias policing, excessive use of force, or law violation. The employee shall complete notifications prior to his/her shift's end.

### **Internal Complaints**

Any employee may file a complaint against another Division employee by contacting the OCPS Director. The OCPS Director may forward any such complaint to a Command Staff member for further investigation as outlined in this policy. If the employee files an anonymous complaint, the employee waives any right to be further involved in the complaint, including being notified of the resolution. An employee who knowingly files a false complaint is subject to the disciplinary process per Policy 3.20 (Disciplinary Procedures).

Any employee aware of a law violation by another Division employee shall immediately report it to the Watch Commander or a Command Staff member and to the OCPS Director. The OCPS Director will report such allegations to the Deputy Chief and Chief. To protect the employee's identity, the OCPS Director may list a Command Staff member as the complainant.

### **Complaint Notifications**

Upon complaint receipt, the OCPS Director will notify the Deputy Chief who will notify the Chief. Unless such action would compromise the process, the employee's Command Staff member will be kept advised. OCPS will notify the complainant that the complaint has been received by them. An anonymous complainant or a complainant without current contact information will not receive a notification and OCPS will document the reason for lack of notification. The delivery method may be verbal or written, but OCPS will document the method/date of all notifications. OCPS personnel, in consultation with the OCPS Director, will determine the appropriate details to be released with notifications. Notifications will include:

- Verification of complaint receipt;
- Schedule for status notifications; and
- Notification of the resolution.

### **Preliminary Reviews**

Upon receipt of a complaint, OCPS will conduct a preliminary review to determine the following:

- The sufficiency of information to proceed in determining the employee's identity and basic facts;
- The validity, nature, and severity of the complaint; and

- Any available evidence of the complaint such as audio or video recordings, Incident Reports, Supplemental Reports, or other written documentation, photographs, or witnesses.

### **Preliminary Review Reports**

OCPS will issue a report for any preliminary review not recommended for further investigation and denote Closed - No Further Action (see below). For unproven complaints, OCPS may use "Subject Officer" or "Subject Employee." The report will contain a brief complaint description and evidence to support the conclusion. OCPS will send a copy to the Deputy Chief, Chief, and any applicable Bureau Commander.

### **Initial Classifications**

After a preliminary review, OCPS will classify the complaint into one (1) of the following categories:

- **Closed – No Further Action** – Clearly invalid complaint closed without further investigation or complaint resolved after a preliminary review disproves the allegation;
- **Open – Referred to Bureau** - Complaint sent to a Bureau for a supervisory inquiry. OCPS may send any complaints involving employees not assigned to a Bureau to the Deputy Chief;
- **Open – Internal Affairs Investigation** - Complaint sent for internal affairs investigation; or
- **Open – External Referral** - Complaint referred to an external entity for investigation.

The OCPS Director generally refers complaints identified as Bureau-level responsibilities in Policy 1.03 (Code of Conduct) to a Bureau. The OCPS Director, in consultation with the Deputy Chief or Chief, may retain responsibility for them or assign matters not involving the Code of Conduct to a Bureau. The OCPS Director may defer classifying any complaint that involves a criminal investigation and, with the Chief's consent, may suspend a complaint investigation pending the conclusion of a criminal investigation. The Chief may assign any complaint for an internal affairs investigation or referral for external investigation.

### **Bureau Commander Inquiry Process**

OCPS may forward a complaint to a Bureau Commander for review where further supervisory inquiry is needed, and the complaint involves minor policy violations that a supervisor would routinely handle under Division policies. A Bureau Commander or designee will conduct an inquiry and generate a report. The Bureau Commander will forward to the OCPS Director a report documenting:

- All relevant facts found by the Bureau-level inquiry;
- A finding as to whether the employee engaged in the alleged improper conduct; and
- A discipline recommendation if it is determined the employee engaged in improper conduct.

The OCPS Director may direct the Bureau Commander to engage in further inquiry, supplement the report with added information, or adopt it as the OCPS report. The OCPS Director will forward this report to the Deputy Chief and Chief for review. The Chief may accept the findings or order other actions.

### **Internal Affairs Investigations**

Internal affairs investigations will typically be initiated for serious misconduct allegations such as major policy violations, criminal conduct, certification misconduct, discriminatory actions, sexual harassment, or a pattern of legal or policy violations. OCPS will open an internal affairs investigation of a complaint which may lead to employment termination, loss of certification/commission, or other serious consequences.

OCPS will provide written notification to the subject of an internal affairs investigation of the nature of any allegations, investigation classification, employee's rights, and responsibilities relative to the investigation. OCPS may withhold employee notification if it would compromise the investigation or if after preliminary review it is determined by OCPS that a serious misconduct or violation of law or policy did not occur.

In the best interest of the Division and University, the Chief may direct that an employee be relieved of duty or reassigned to administrative/limited duties pending the outcome of an investigation involving serious misconduct allegations. Relief from duty or reassignment may also be used if the employee's physical or psychological fitness is impaired. The Chief will approve any changes in duty status.

OCPS will complete all internal affairs investigations within thirty (30) days except those investigations suspended pending a criminal investigation. Upon written request from the OCPS Director, the Chief may grant unlimited extensions beyond the thirty (30) day deadline in additional thirty (30) day increments.

### **Interviews of Division Employees**

OCPS may interview any employee for an internal affairs investigation. Before the interview, the OCPS investigator will inform an employee if he/she is the subject of the investigation. An OCPS investigator may order any employee, regardless of rank, to answer questions in an investigation. The employee does have the option not to cooperate; however, a failure to cooperate may result in disciplinary action up to and including termination. Any compelled testimony during an internal administrative investigation generally cannot be used against the employee in a subsequent criminal proceeding. In situations in which a Garrity v. New Jersey issue is present, the OCPS investigator will provide employees with written Garrity warnings.

### **Tests and Disclosures**

Upon specific direction and approval of the Deputy Chief or Chief, OCPS may require an employee to submit to any of the following tests/disclosures when it is related to the internal affairs investigation. Failure to follow a direct order to submit may result in a separate disciplinary action.

- Medical or laboratory examinations;
- Photographs or fingerprints;
- Audio or video recordings;
- Participation in a line-up;
- Financial disclosure statements; and
- Polygraph examination.

### **Internal Affairs Reports**

After an internal affairs investigation, OCPS will issue a report with supporting documentation and conclusion of fact for each allegation. OCPS will provide the report to the Deputy Chief and Chief. Upon conclusion, OCPS will designate all allegations in one of the following five (5) categories.

1. **Unfounded** – The complaint was not based on facts as determined by the investigation, or the incident did not occur.
2. **Exonerated** – The actions reported did occur, but the investigation disclosed that the actions were reasonable, lawful, and proper.
3. **Not Sustained** – Insufficient evidence available to either prove or disprove the allegations in the complaint.
4. **Sustained** – Investigation disclosed sufficient evidence to support the allegations in the complaint.
5. **Closed by Exception** – The complainant withdraws the complaint or refuses to cooperate with the investigation, or the employee leaves employment with the agency, or the investigation is closed by an external agency.

The Chief will approve any finding and may accept the report, reject the report, and/or direct OCPS to conduct additional review. OCPS will not distribute complete report copies unless directed by the Deputy Chief or Chief. OCPS will notify the employee and complainant of the final resolution of the investigation. OCPS will not generally provide the final report to the complainant unless directed by the Deputy Chief or Chief. The Deputy Chief or Chief may require information obtained during the investigation to be forwarded to the Training Unit or other units to assist with future training curriculums and directive development.

### **Reporting Findings to External Agencies**

The Division will report any sustained findings that involve certification misconduct (per state law - see Division Policy 1.03 – Code of Conduct) or excessive force not involving certification misconduct (per state law) by an officer to the South Carolina Criminal Justice Academy (SCCJA) and South Carolina Law Enforcement Division (SLED). OCPS will send the final report approved by the Chief to both entities to determine the status of an officer's certification (SCCJA) and constable commission (SLED). The Division may terminate any officer if SCCJA withdraws the certification or SLED withdraws the commission.

The Division will also report sustained misconduct findings to the Fifth Judicial Circuit Solicitor's Office for a determination of the employee's status pursuant to Giglio v. United States. Under Giglio, the State must

disclose any sustained allegations of misconduct, such as the actions defined as certification misconduct, to a criminal defendant before trial. Because all employees (sworn or non-sworn) may testify due to their job duties, the Division must inform the Solicitor's Office of any Giglio issues involving them. The Division may terminate an employee if the Solicitor's Office determines a Giglio status barring testimony.

### **Complaint Records**

The OCPS Director will maintain complaint records in a secure manner separate from personnel, case, or other files and with access limited to the OCPS staff, Deputy Chief, and Chief. Electronic files may be secured by granting user rights to specific individuals. These records are confidential with distribution only upon approval of the Deputy Chief or Chief or as required by law. After the time frames below, OCPS may purge any documents according to the applicable records retention schedule, unless directed to maintain such records by the Deputy Chief or Chief.

OCPS will maintain case files for all preliminary reviews and internal affairs investigations for a period of:

- Three (3) years following a complaint resolved after a preliminary review;
- Three (3) years following any internal affairs investigation resolved as Unfounded or Exonerated;
- Three (3) years following the subject's separation from Division employment for any internal affairs investigation resolved as Not Sustained or Closed by Exception; and
- Five (5) years following the subject's separation from Division employment for any internal affairs investigation resolved as Sustained.

The Division may withhold an employee's identity for complaints with findings of Unfounded, Exonerated, Not Sustained, or Closed by Exception from any third party not required to receive disclosures by law or court order. For findings other than Sustained, the OCPS Director may designate any employee be referred to by a pseudonym to protect against unsubstantiated accusations or to protect witness confidentiality. OCPS may provide documentation of findings to the University's Division of Human Resources.

### **Statistical Summary of Complaints**

The OCPS Director will issue an annual report providing a statistical summary of all complaints and internal affairs investigations. This summary will not provide the names or identifying information concerning the complainant or subject of the complaint. The summary will be made available to Division employees and public and will include:

- Number and type of complaints filed in the calendar year;
- Number and type of complaints closed in the calendar year;
- General remedial action taken for all substantiated complaints in the calendar year;
- Recommendations for additional training directed towards increased complaints in any area; and
- Recommendations of any policy changes.