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|  | STANDARD OPERATING PROCEDURE   |                             | NO. 139 |
|   | Internal Investigations  |                             |         |
|   | Effective Date:<br>06/06/2018  | Revised Date:<br>02/17/2020 |         |
|   | Approved by: David Jones, Fire Chief  |                             |         |

## Purpose

To define a process for investigations conducted in response to allegations, knowledge, or reports of misconduct, and/or deviations from policy or procedure in a fair and consistent manner.

## Policy

### INTERNAL INVESTIGATIONS

1. The Department is proud of the men and women it has recruited and hired as employees. Selection of the finest employees is the first step in providing professional services to the public. Supervisors within the Department are responsible for ensuring the appropriate behavior and conduct of the firefighters and employees assigned under them. Complaints may arise internally or externally to the Department.
2. The Department is responsible for responding to all allegations of misconduct against the agency and/or any of its members. A thorough and objective investigation of complaints of misconduct is critical to the integrity of the Department and the trust of the general public.
3. Allegations requiring an investigation range from minor infractions of policy or procedures to serious allegations of criminal conduct. All investigations will be conducted in a professional manner.
4. The purpose of the investigation is to obtain information to make factual findings and to determine whether disciplinary action is warranted. Disciplinary action up to and including involuntary termination may result.
5. Employees are required to fully cooperate during an investigation and to answer questions fully and truthfully. Employees who are untruthful and/or uncooperative are subject to disciplinary action up to and including involuntary termination.
6. The goal of the Department's disciplinary process is to provide a positive and effective means of formally communicating expectations and improving employee performance.
7. In all instances, it is assumed Fire Department employees are familiar with applicable administrative directives, policies, procedures, and/or laws.

## Progressive Discipline

1. **Purpose of Discipline.** Departmental discipline emphasizes employees' responsibility for the consequences of their own behavior, with a focus on communicating expectations for changes in behavior and needed improvement. In other words, discipline is a tool for supervisors to use to ensure that employees know both what is expected of them and the consequences if they fail to meet those expectations. While the primary purpose of discipline is to correct and prevent the recurrence of unacceptable conduct and/or job performance, in some cases termination of employment is the appropriate response.
2. **Disciplinary Records/Documentation.** All discipline must be documented in writing. All discipline must be approved by the Fire Chief, or designee. The documentation will set out the unacceptable conduct and/or performance and, except in the case of discharge, future expectations and consequences if expectations are not met. If applicable, employees will be advised of their appeal rights. All documentation must be signed by the appropriate supervisor(s) and the employee. A copy will be given to the employee. Discipline records will be maintained in the employee's Departmental file, with a copy to Human Resources. All discipline will be recorded in the Department's Complaint Log.
3. **Written Complaint.** In accordance with §§614.021-.023 of the Texas Government Code, a written complaint is required before any coaching, reprimand or discipline can be taken against a firefighter. The person making the complaint, whether internal or external to the Department or Town, must sign the complaint and a copy must be given to the firefighter within a reasonable time after it is filed. The firefighter cannot be discharged until after the complaint is investigated and evidence exists to prove the allegation of misconduct.
4. **Fact Gathering/Investigation.** Before disciplinary action is taken, the Department will review and/or investigate the employee's conduct/performance and gather relevant facts. The Fire Chief may request input and/or recommendations regarding discipline.
5. **Unpaid Suspension, Demotion, or Discharge.** If the Department is considering an unpaid suspension of one day (or one shift) or more, demotion, and/or discharge, the employee will normally be given an opportunity to respond to the allegations prior to disciplinary action being taken. See Town's Disciplinary Action policy. If an employee is to be terminated, the Fire Chief will consult with the Director of Human Resources before the termination occurs.
6. **Administrative Leave.** When a disciplinary decision is pending, including during the time a Departmental investigation is being conducted, an employee may be placed on administrative leave by the Fire Chief (or designee). The leave may be with or without pay.
7. **Civil or Criminal Proceedings.** Employees must immediately (no later than 24 hours) notify their supervisor and the Fire Chief if they are arrested, charged, indicted, convicted, receive deferred adjudication, or plead nolo contendere to any misdemeanor or felony. In most cases, the Department will conduct its own investigation and take appropriate action. In rare cases, however, the employee may be placed on administrative leave, with or without pay, until the civil or criminal matter is resolved. See Town's Employee Conduct and Work Rules/Disciplinary Policy.

## RECEIPT OF COMPLAINTS

1. All complaints against the Department or one of its employees will be accepted and reviewed, so long as the facts surrounding an allegation may be corroborated.
2. All supervisors are responsible for accepting any and all complaints, whether internal or external, and forwarding them to Fire Administration as soon as possible. All complaints, regardless of nature, can be filed in person, by mail, by email, or by phone at any time.
3. Supervisory personnel may conduct an immediate preliminary inquiry to determine if grounds exist to conduct an internal investigation. If the preliminary inquiry finds that applicable policies, procedures, and law have been followed and that there is no misconduct, the supervisor will normally be the Departmental representative who will explain the findings to the complainant. If appropriate, the supervisor may explain Departmental policies and procedures, a misunderstanding of which may have precipitated the complaint.
4. Supervisors who receive a complaint will immediately notify their chain of command to ensure that the Fire Chief receives timely notification. The Fire Chief must be notified immediately, through the chain of command, upon receipt of all Formal complaints and of Administrative complaints that have (or are likely to have) public or media involvement. The Fire Chief must be notified of all other complaints by the next work day; if, however, a member of the chain of command is not immediately available, the Fire Chief must be notified directly.

## COMPLAINT CLASSIFICATION

1. The Department will review complaints to determine the appropriate response. In some cases, after a preliminary inquiry, no further action is required. In cases requiring further investigation, the complaint will be classified as Formal or Administrative, depending upon the type and severity of the allegation(s).
2. The employee's chain of command normally makes a recommendation as to the classification of the complaint and the final determination is made by the Chief (or designee).
3. Complaints are classified as one of the following:
  - a. **Formal Complaint** – Formal complaints are normally those alleging violations of Town policy involving unlawful harassment, violations of constitutional rights, federal or state laws, physical abuse, and/or other serious misconduct.
  - b. **Administrative Complaint** – Administrative complaints are normally those alleging minor infractions of Departmental and/or Town policies, procedures, or directives that are either not directly observed, or that are directly observed but still require some level of investigation.
  - c. **Minor Complaints** – Complaints alleging minor infractions that are directly observed or documented; eg, audio or video recordings, CAD records, time entries etc. where no further investigation is required, are to be addressed by the immediate supervisor. These usually result in verbal/written coaching.

D. **No Further Action Needed** –A determination that no further action is needed is based on a preliminary review of video, audio, witness and/or complainant statements, which clearly show that no misconduct or other inappropriate behavior occurred. Often, these types of allegations can be resolved by explaining to the complainant applicable Departmental practice, policy, procedure, or law.

4. The classification of a complaint as Formal or Administrative determines the level of investigation that will be initiated. As facts are developed during the course of the investigation, the complaint classification and/or level of investigation may be changed.
5. Supervisors who receive a complaint from an external source should document receipt via email to the Fire Chief through the chain of command.

### **COMPLAINT LOG**

Upon receipt by the Department, all complaints resulting in excess of written coaching are recorded in the Department's *Complaint Log*, which is maintained by the Fire Administration Supervisor. A complaint number is assigned to each complaint and recorded in the log, along with its classification as either Formal or Administrative; the date the complaint was received; the complainant's name; a brief summary of the allegation(s); the supervisor assigned to investigate; the date the investigation was completed; the disposition; the disciplinary or other action taken.

### **COMMUNICATIONS & NOTIFICATION TO EXTERNAL COMPLAINANTS**

1. Complainants external to the Department must be notified of the Department's receipt of their complaint and kept apprised throughout the investigation process.
2. The investigator should contact the complainant within 24 hours of the investigator being assigned the complaint and will provide an overview of the process.
3. Within ten days after the investigation is finalized, the complainant will be notified of the outcome. This final notification will be provided by the Fire Chief or designee.

### **RESPONSIBILITY FOR INVESTIGATING COMPLAINTS**

1. **Assignment of Investigator.** The Fire Chief (or designee) will assign the investigation of complaints based on the following:
  - a. **Formal Complaints** – Formal complaints will be investigated by a supervisor assigned by the Fire Chief.
  - b. **Administrative Complaints** – Administrative complaints will be investigated by a supervisor assigned by the Deputy Fire Chief. These investigations will typically be assigned to the employee's immediate supervisor.

2. **Criminal Allegations.** If a criminal offense is alleged, two separate investigations will normally be conducted, a criminal investigation and an internal investigation. If, during an internal investigation, it is discovered that a criminal offense may have been committed, the investigator must immediately notify the Fire Chief, via the chain of command. The criminal investigation will be referred to either the Police Department or an outside agency. The internal investigation will determine compliance with policy, procedure, and directives. The criminal investigation will normally be handled first, so as not to interfere with the criminal investigation. In accordance with *Garrity* protections, the internal investigation may obtain evidence from the criminal investigation, but the criminal investigation cannot obtain information from the internal investigation which was the result of an interview or interrogation of the subject employee.
3. **Deadlines.** Complaints should be assigned for investigation as soon as possible to facilitate collection of relevant evidence, including statements if appropriate. Complaints should be investigated and concluded as quickly as possible, normally within 90 days from the date the complaint is received. Any resulting disciplinary or other action should be issued within 20 working days after the investigation is completed. If additional time is needed, a request must be made to and approved by the Chief.

### **WRITTEN COMPLAINT**

1. In accordance with Sections 614.021-.023 of the Texas Government Code, a written complaint is required before any discipline can be taken against a firefighter. Because the Department normally follows the same guidelines for both sworn and civilian employees, the person making the complaint, whether internal or external to the Department or Town, must sign the complaint and a copy must be given to the employee within a reasonable time after it is filed.
2. A written complaint will be issued to the employee for all Formal and Administrative investigations. The written complaint will be timely issued to the employee in writing as a notice of complaint & investigation. As part of the written complaint, the employee will be provided with a summary of the factual allegations and the policies and procedures alleged to have been violated.
3. The “victim” of alleged misconduct will not always be the complainant. In some cases, the complaint will be made by a member of the Department based upon concerns or allegations initially raised by a third party. If a supervisor receives a complaint from someone external to the Department, the supervisor should document the allegations in writing and submit it to his/her chain of command.
4. If additional information during the investigation gives rise to an additional allegation(s) of misconduct that would likely result in disciplinary action, then the initial written complaint will normally be amended, or a new complaint issued to address the additional allegation(s).
5. The Department will not involuntarily terminate an employee unless the complaint is investigated and there is evidence to prove the allegation(s) of misconduct set out in the written complaint.

## INVESTIGATION PROCESS - GENERAL

1. All investigations, whether classified as Formal or Administrative, must be conducted in a thorough and professional manner.
2. Administrative investigations are typically conducted by the employee's immediate supervisor and may be done without taking any written statements. The investigator may, however, require that the employee and/or other witnesses provide a written statement or description of an event.
3. The investigator will confirm that the employee has been provided all required documentation, will discuss the allegations in the complaint with the employee, and may request his/her explanation in writing.
4. The investigator will investigate each allegation in a complaint, make findings, and then prepare a written report. The investigator will review all available relevant evidence, which may include witness statements, documents, video and/or audio recordings, other recorded images, etc.
5. Administrative investigations may develop into Formal investigations based on information obtained during the investigation. The Fire Chief will be alerted to any information that indicates the incident is any more serious than first believed. If the Fire Chief reassigns the complaint as a Formal investigation, the Chief may leave the original supervisor as the investigator or assign the investigation to another supervisor. The Complaint Log number will normally be reassigned as a Formal investigation and issued a new Complaint Log number.
6. For Formal and Administrative investigations, a complete investigation is conducted and a summary report is prepared.
7. With approval from the Fire Chief, the investigator may request that the complainant take a polygraph.

## EMPLOYEE SAFEGUARDS

1. **Investigations - Interviews.**
  - a. Unless approved otherwise by the Chief, the investigator will not formally interview the employee under investigation until the employee has been issued a written complaint. The investigator will normally gather information and physical evidence and obtain statements from the complainant and witnesses, if any, prior to interviewing the employee under investigation.
  - b. The Department will make a reasonable effort to schedule interviews at a time agreed to by the employee, unless the seriousness of the investigation is such that an immediate interview is required. The employee will be considered on duty at the time of the interview and may have his/her schedule adjusted. Overtime will be paid when required by law.
2. **Garrity Warning.** In Formal investigations, in addition to a signed written complaint, the employee under investigation will receive a written *Garrity* warning even if no criminal conduct is alleged. *Garrity* warnings are not usually provided in Administrative investigations unless specifically requested by the employee under investigation. *Garrity* warnings are not provided to employee witnesses unless they specifically request that one be issued.

3. **Civilian Employees.** Complaints and investigations involving civilian employees will follow guidelines set forth in the Town of Addison Employee Handbook.
4. **Periodic Updates.** As soon as practical and/or appropriate after being assigned an investigation, the investigator will contact the employee and advise him/her that the investigation has been assigned. The investigator should contact the employee at least once every three weeks and provide an update on the status of the investigation. Once the investigation report is completed and submitted to Fire Administration for review, the Deputy Chief should contact the employee at least once every two weeks and provide an update on the status of the investigation. These updates can be accomplished via email, written letter, phone call, or text message (if appropriate for the type of complaint).
5. **False Complaints.** Consideration will be given to filing False Report to Police or Perjury charges if sufficient evidence exists to support such a charge. If the investigator finds sufficient evidence to support such a charge, he/she must obtain the Fire Chief's approval to initiate a criminal investigation. Further, false or exaggerated complaints may be grounds for disciplinary action up to and including termination.

### **INVESTIGATIONS - REPORT AND FINDINGS**

1. Upon completion of the investigation, the investigator will make factual findings and conclusions for each allegation set out in the complaint(s). The conclusion will be one of the following:
  - a. **Unfounded** - The allegation is false.
  - b. **Exonerated** - The allegation is true, but the actions were proper and lawful.
  - c. **Not Sustained** - Sufficient evidence does not exist to either prove or disprove the allegation.
  - d. **Sustained** - Sufficient evidence exists to prove the allegation is true and the conduct was a violation of law and/or a violation of Departmental or Town policies, procedures, and/or directives.
  - e. **Policy Change or Training Need Indicated** - There is no violation of existing policy or procedure, but training or adoption of a new policy or procedure is recommended.
2. The investigator's final report will be reviewed by the Fire Chief, who may send the report back for further investigation, reject some or all of the investigator's findings and/or conclusions, or concur with the investigator's findings and conclusions. The Fire Chief may consult with the firefighter's chain of command as well. The Fire Chief will make a final determination as to the findings and conclusions.

### **INVESTIGATIVE TOOLS AND RESOURCES**

1. In addition to interviews of the employee under investigation and any witnesses, the Fire Chief may authorize additional investigation methods, including those set out below.

2. **Drug and Alcohol Testing.** If reasonable suspicion exists to believe that an employee is under the influence of drugs and/or alcohol, he/she may be required to submit to drug and/or alcohol testing. The employee will normally be placed on administrative leave until the results of the test(s) are known. An employee who refuses to be tested or who attempts to alter or tamper with a sample or any other part of the testing process will be subject to disciplinary action for failing to cooperate in an internal investigation and may also be immediately relieved of duty and placed on administrative leave. The Chief (or designee) must authorize the testing in advance. See the Town's Drug and Alcohol Testing Policy for additional requirements.
3. **Searches.** The Department may conduct searches or inspections of work sites, including but not limited to Town property used by employees such as files, lockers, file cabinets, desks, offices, vehicles, cell phones, cameras, computers, and electronic data and files, whether secured, unsecured or secured by a lock or password provided by the employee. The Department may also seek to conduct searches or inspections of an employee's personal property located on Town premises, including vehicles parked in Town parking lots. This will normally be accomplished pursuant to a search warrant or the consent of the employee.
4. **Photos.** Photographs or other recorded images of employees may be required by the Department and may be taken or used, with or without their consent, for the purpose of internal investigations if they are suspected of misconduct.
5. **Polygraphs.** If related to the firefighter's duties and/or job performance, the Fire Chief may order a polygraph. The results of a polygraph will not be used as the sole basis for disciplinary action against an employee. However, refusal to submit to a polygraph, refusal to answer all questions, and/or taking evasive measures will likely result in disciplinary action up to and including involuntary termination.

### **SECURITY OF INVESTIGATIVE RECORDS**

1. The investigator will keep all documentation and information related to the investigation of a complaint in the strictest confidence, both during and after the investigation. Information will be provided only to those persons who have a "need to know." Any person taking the initial complaint will ensure that the information, and any related documentation, remains confidential to the extent permitted by law and that it is timely forwarded to the appropriate investigator or the office of the Fire Chief.
2. Internal investigative files must be stored in a secure manner for the duration of the investigation. These files will be maintained separately from the personnel records within the Department's administrative office and shall only be accessed by authorized personnel. Completed investigations are forwarded to the Human Resources Department.

### **INVESTIGATION DOCUMENTATION**

1. **Garrity Warning.** While the provisions of *Garrity* apply in any internal investigation, the Department will normally issue a *Garrity* warning to the employee charged with misconduct in a Formal investigation.
  - a. *Garrity* warnings will not usually be provided in Administrative investigations unless specifically requested by the employee under investigation.
  - b. *Garrity* warnings are not usually provided to employees who are simply witnesses in an investigation unless specifically requested by the witness employee.



2. **Confidentiality Order.** This documentation is used to ensure confidentiality and integrity of investigation.
3. **Notice of Administrative Leave.** This documentation is used to notify an employee who is being placed on administrative leave.
4. **Notice of Proposed Discipline.** This document will be used by the Department to inform the employee of the investigation findings and proposed discipline, when the discipline being considered is an unpaid suspension, demotion, or involuntary termination.
5. **Notice of Disciplinary Action.** This will be used by the Department to document the disciplinary action taken.