

Georgia Department of Public Safety

Policy Manual

SUBJECT COMPLAINTS	POLICY NUMBER 8.02
DISTRIBUTION ALL EMPLOYEES	REVISED DATE 6/29/2018
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8.02.1 Purpose

It is the policy of the Georgia Department of Public Safety to fairly, efficiently, thoroughly, and impartially investigate all complaints against department personnel. The department is dedicated to the preservation of integrity through the effective evaluation of its practices, procedures, and the conduct of its employees. This policy establishes the procedures to be utilized to receive, process and investigate citizen complaints and/or internal department complaints.

8.02.2 Definitions

The definitions listed below are for purposes of this policy only.

- A. Complaint - an allegation or charge that an employee of the Georgia Department of Public Safety is guilty of acting in an unprofessional manner, insubordination, misconduct, mishandling of public money, unlawful activity under either state or federal law or some other violation of the policies or rules of the department. Complaints are classified as citizen complaints and internal department complaints.
- B. Complainant - any individual who files a complaint under this policy against an employee of the Georgia Department of Public Safety.
- C. Accused employee - the employee against whom the complaint is filed.
- D. Adverse action - any disciplinary action that affects an employee's salary, status or permanent rank. (Suspension without pay, disciplinary salary reduction, demotion and termination or dismissal.)
- E. Division Director - any of those persons with limited appointing authority in the Georgia Department of Public Safety, which includes the Lt. Colonels, the Georgia State Patrol and Motor Carrier Compliance Commanding Officers, the Headquarters Adjutant, the Directors of Legal Services, Human Resources, and the Office of Professional Standards, the Chief Financial Officer and the Comptroller. In the Appointing Authority's absence, the Appointing Authority may name a designee.
- F. Direct Supervisor - any person in a direct supervisory position over employees including, but not limited to: Post/Unit Commanders and Headquarters Office Managers.

- G. Section Supervisor - any regional supervisor including, but not limited to: Troop/Region Commanders and Headquarters Administrative Operations Coordinators.
- H. Workday - a Monday through Friday business day excluding state holidays or other days when state offices are closed.

8.02.3 Filing A Complaint

The Georgia Department of Public Safety shall receive complaints from citizens and/or from department employees. Direct supervisors are authorized to resolve any complaint that alleges minor employee misconduct and if proven true, would require corrective action less than a corrective interview.

- A. Citizen complaints are complaints filed against a department employee by a member of the general public. If the direct supervisor cannot resolve a citizen complaint involving minor misconduct, then the supervisor shall advise the complainant of the procedure for filing an official complaint.
 - 1. When possible, citizen complaints shall be documented on a DPS Complaint Form (DPS 44), which shall be maintained at all Georgia Department of Public Safety facilities and made available upon request.
 - 2. Department employees shall make every effort to accommodate a citizen with a complaint against an employee or the department, and provide the procedure to follow.
 - 3. Citizen complaints are to be directed to the accused employee's direct supervisor. Any non-supervisory employee having contact with a complainant, either in person or by telephone shall, as soon as practical, put the complainant in contact with their supervisor.
 - 4. Complaints received at a location other than at the accused employee's assigned duty station shall be referred to the accused employee's direct supervisor, or accepted by a supervisor and forwarded to the accused employee's direct supervisor.
 - 5. The following types of citizen complaints shall be accepted:
 - a. Complaints documented on a Department of Public Safety Complaint Form (DPS 44) and received in person, by email or through the mail;
 - b. Complaints that allege employee misconduct, which if proven true, could result in an adverse action, shall be accepted verbally or anonymously. The receiving DPS employee shall complete the complainant section of the DPS 44 and forward to a supervisor,
 - c. Third party complaints - if the complainant is the spokesperson, the guardian of a minor child, or acting on behalf of someone incapable of filing a complaint due to a handicap or injury. The complaint shall be accepted as though the affected person had made the complaint. Third party complaints shall also be accepted if the allegation involves misconduct, which, if proven true, would impair operations or damage the reputation of the department.
- B. Internal department complaints are allegations of misconduct or policy violations made against a department employee by a supervisor or another member of the

department. Nothing in this policy shall limit the authority of a supervisor to effectively manage the day-to-day activities of department employees. However, if the discipline for the alleged misconduct, if proven true, could reasonably result in a corrective interview, the matter shall be pursued as an administrative or internal affairs investigation as dictated by this policy. Unlawful harassment allegations shall be reported as specified in the Unlawful Harassment Policy #5.01.

1. Internal Department complaints shall be documented in a manner, which details the circumstances or actions that constitute the complaint.
2. When filing a complaint against another member of the department, employees shall adhere to the DPS chain of command and submit the complaint to their direct supervisor. If the employee feels that, due to the nature of the complaint, they cannot adhere to the proper chain of command, the complaint shall be forwarded to the next appropriate level of command. The complainant must be able to satisfactorily articulate why there exists the need to file a complaint outside the normal chain of command.

8.02.4 Processing A Complaint

Complaints filed against department employees shall be reviewed by the employee's direct supervisor and section supervisor before being forwarded to the Division Director.

A. Citizen Complaints

1. The accused employee's direct supervisor shall complete the appropriate portion of the complaint form relating to receipt of the complaint and shall send an acknowledgment letter (form DPS 45) to the complainant.
2. The direct supervisor shall gather available information pertinent to the complaint, such as, but not limited to; Computer Added Dispatch (CAD), vehicle stop logs, citations, crash reports, incident reports, use of force reports, video recordings, or any other information considered relevant to the complaint.
3. The direct supervisor should use discretion while gathering information relevant to the complaint so as not to hinder any subsequent investigation. If the direct supervisor is unsure whether the accused employee may be notified, guidance should be sought from their chain of command. The accused employee shall not prepare an official response to the complaint or submit to an interview until officially contacted by the case investigator.
4. The direct supervisor shall sign and date the complaint form and forward it and any supporting documentation to the section supervisor.
5. The section supervisor shall review all records submitted by the direct supervisor, sign and date the complaint form, and forward the complaint form and all supporting documentation to the Division Director.

B. Internal Department Complaints

1. If the alleged misconduct meets the criteria for an administrative or internal affairs investigation, the complaint shall be forwarded to the accused employee's direct supervisor or another supervisor in the accused employee's chain of command as specified in this policy.

2. The receiving supervisor shall gather available information pertinent to the complaint, such as, but not limited to; Computer Added Dispatch (CAD), vehicle stop logs, citations, accident reports, incident reports, use of force reports, video recordings, or any other information considered relevant to the complaint.
3. The direct supervisor should use discretion while gathering information relevant to the complaint so as not to hinder any subsequent investigation. If the direct supervisor is unsure whether the accused employee may be notified, guidance should be sought from their chain of command. The accused employee shall not prepare an official response to the complaint or submit to an interview until officially contacted by the case investigator.
4. The receiving supervisor shall sign and date the complaint and forward it and any supporting documentation to the next level of command until the complaint reaches the Division Director.

8.02.5 Classification Of Complaints

Complaints against department employees may be investigated administratively by the accused employee's chain of command or as an internal affairs investigation by the Office of Professional Standards. Complaints and supporting documentation received by the Division Director shall be reviewed for accuracy and completeness, signed and dated, and forwarded to the Director of the Office of Professional Standards. The Division Director shall confer with the Director of the Office of Professional Standards before the decision is made as to whether the investigation will be pursued as an administrative investigation or as an internal affairs investigation. If the Division Director and the Director of the Office of Professional Standards cannot reach a consensus as to the most appropriate level of investigation, guidance may be sought from the Director of Legal Services. If consensus still cannot be reached, the Commissioner of the Department of Public Safety shall make the decision.

- A. Administrative investigations are inquiries into complaints of employee misconduct. Administrative investigations shall be investigated by a section supervisor or designee. An administrative investigation shall be conducted when the allegation of employee misconduct includes, but is not limited to, the following:
 1. Minor policy violations, which, if proven true, would usually result in discipline no greater than a corrective interview;
 2. Violations of the terms and conditions of employment (e.g. dress code, tardiness, use of leave, etc.);
 3. Complaints relating to the issuance of citations or the preparation of crash reports;
 4. Complaints of rudeness or unprofessional behavior;
 5. Allegations of insubordination, and/or
 6. Any other complaint, which does not meet the criteria for an internal affairs investigation.
- B. Internal affairs investigations are inquiries into complaints of employee misconduct. The Internal Affairs Unit of the Office of Professional Standards shall conduct internal affairs investigations. Internal affairs investigations shall be conducted when the alleged misconduct includes, but is not limited to, the following:

1. Discharge of a firearm during the commission of a police action other than a scheduled training exercise;
2. Complaints of excessive use of force;
3. Allegations of criminal violations;
4. Allegations of theft or the mishandling of funds;
5. Any allegations of misconduct which the Commissioner or the Division Director feels that, due to exigent circumstances, the matter should be investigated as an internal affairs investigation, and/or
6. Allegations of misconduct that involve employees assigned to more than one Division and the investigation can be most appropriately handled as an internal affairs investigation.

8.02.6 Investigating A Complaint

Complaint investigations shall be conducted uniformly throughout the department.

A. Assignment of a Complaint Investigation to a Case Investigator

1. If the complaint is to be investigated as an administrative investigation, the accused employee's Division Director shall assign the investigation to a section supervisor or designee who shall direct the investigative process. If necessary, the Division Director may assign the investigation to another section supervisor within their division.
2. If the complaint is to be investigated as an internal affairs investigation, the Director of the Office of Professional Standards shall assign the investigation to an internal affairs investigator and shall direct the investigative process.

B. Duties and Responsibilities of the Case Investigator

1. The investigator shall within three workdays of assignment of the complaint investigation make written notification to the complainant, the accused employee and the accused employee's direct supervisor advising that they have been assigned the investigation and shall provide the investigator's office telephone number. The requirement to notify the accused employee may be postponed if notification might jeopardize the integrity of the investigation. The case investigator shall make periodic updates at least every thirty days to the complainant informing the complainant of the status of the investigation.
2. The investigator shall collect all evidence relevant to the investigation.
3. Interviews of all parties with information relevant to the investigation shall be conducted.
 - a. The questions posed to a department employee should be narrowly directed and specifically related to the allegation of wrongdoing against the employee and/or their duties and responsibilities.

- b. Interviews with the complainant and non-department witnesses shall be scheduled for a time and location convenient for the witness.
 - c. Interviews with department employees shall usually be conducted at a reasonable time when the employee is on-duty and at a location normally chosen by the investigator. If the interview is scheduled during off-duty hours, the employee will be considered on-duty and permitted to carry the time as on-duty time.
 - d. Interviews with department employees shall be conducted without the threat of punishment or promise of leniency. It is the duty of department witnesses to cooperate with the investigator and answer all questions relating to the matter under investigation.
 - e. Questioning shall be reasonable in duration and time shall be provided to the employee for rest and personal necessity.
 - f. No recording of the interview shall be made without the knowledge of all participants.
4. Depending on the circumstances of the investigation, the investigator shall administer the appropriate employee rights waiver as required by *Miranda v. Arizona*, 384 U.S. 436 (1966) or *Garrity v. New Jersey*, 385 U.S. 493. Advice may be sought from the Director of the Legal Services Division or the Georgia Department of Law as to the appropriateness of advising an employee of these rights.
 5. Medical examinations, psychological examinations, polygraph tests, blood, breath and urine samples, photographs, attendance in a suspect line-up, financial statements or similar tests and procedures or materials may be requested or demanded to any extent provided by law. Prior permission shall be obtained from the Director of the Office of Professional Standards before such tests or procedures are conducted. The Director of the Office of Professional Standards may order the employee to submit to such tests or procedures. Guidance may be sought from the Director of the Legal Services Division or the Director of the Human Resources Division as to the appropriateness of such tests or procedures.
 6. The investigator shall prepare a comprehensive report that includes all relevant evidence gathered to prove or disprove the allegation of misconduct. This investigative report shall be completed and delivered to the investigator's supervisor within thirty days of assignment. Additional thirty-day extensions may be requested in writing to the investigator's supervisor. The report shall have a conclusion of fact or case summary, which is a synopsis of the events the investigator relied upon to prove or disprove the accusation.

C. Employee Rights and Responsibilities

1. Employee Responsibilities

- a. Members of the department are held to the highest possible standards of integrity. Accordingly, employees of the department are required to cooperate with investigators and all other personnel providing official assistance in the investigation.

- b. While an accused employee is the subject of an investigation they shall remain in a normal work status unless the circumstances of the investigation require that the employee be placed on administrative leave. While on administrative leave the employee shall continue to receive their benefits without being charged for use of leave.
- c. An employee on administrative leave pending the outcome of an administrative or internal affairs investigation shall be available to the case investigator during normal business hours and shall adhere to the provisions of the Discipline Policy #8.01.
- d. The employee may be placed under other restrictions that are deemed appropriate by the employee's Division Director. The Director of the Human Resources Division and the Director of the Legal Services Division should be consulted prior to imposing additional restrictions.
- e. Department employees are required to submit to reasonable interviews and cooperate with the investigator and all other personnel providing official assistance in the investigation unless the accusations under investigation are of a criminal nature and cooperation may incriminate the employee.

2. Employee Rights

- a. Department employees shall be afforded all constitutional rights and protections. If the actions of the employee, if proven true, would constitute criminal behavior, the employee will be advised of their Miranda warnings prior to being questioned in an investigation. The employee may refuse to answer questions under the protections of the Fifth Amendment of the United States Constitution.
- b. Upon refusing to answer questions pursuant to Fifth Amendment rights, the employee may be ordered to answer and must answer, but any subsequent answers will be treated as involuntary and may not be used in any manner during any criminal proceeding. If no criminal prosecution is intended, the employee may be advised of their rights in accordance with Garrity, which compels the employee to truthfully and completely answer any and all questions posed by the department. Under Garrity questioning, information given by the employee may not be used against the employee in a criminal prosecution. Information given by the employee under Garrity may be used against the employee in any subsequent administrative action. Employees shall be presented with a Garrity waiver form for their signature. Failure to sign such form will be considered an act of insubordination. An employee who fails to cooperate with the department after they have been afforded protection from criminal prosecution under Garrity, by giving false, misleading, or incomplete responses to material questions, shall be subject to disciplinary action which may include termination of employment.
- c. Unless otherwise directed, the employee may not discuss the interview or any portion of the investigation with any person other than their attorney or other legal representative prior to the completion of the investigation.
- d. No employee of the department has any expectation of personal privacy in the property or offices provided by the department. Therefore, investigators may conduct warrantless searches of all department owned grounds, buildings, and vehicles, to include but not limited to: desks, computer disks and hard-drives, e-mail, lockers, file cabinets, living quarters (including all

furniture whether provided by the department or personally owned), departmental motor vehicles, any other facilities and equipment owned, leased, or controlled by the department, personal items, whether secured or non-secured, discovered in any of the previously mentioned containers or enclosures. Before any warrantless search is conducted, the Director of the Office of Professional Standards or the Director of Legal Services shall be consulted. Any item of contraband or any other type of evidence may be seized during the search and may be used as evidence in criminal or administrative proceedings. A warrantless search of personal items will only be conducted with the approval of the division director.

- e. The investigative file with all recordings, interview transcripts and/or written interview summaries should be made available to the employee upon request after the employee is advised of proposed discipline or after the investigation is closed.

D. Responsibility of the accused employee's Division Director

1. The Division Director will review the complaint and may confer with the Director of the Office of Professional Standards. If appropriate, the complaint shall be forwarded to the Office of Professional Standards Director with a memorandum requesting OPS investigation.
2. The Division Director shall immediately advise the Commissioner of the Department of Public Safety, of complaints of Department employees accused of criminal conduct or serious administrative violations which, if proven true, could result in an adverse action.
3. Complaints of a lesser nature, which, if proven true, could result in discipline less than an adverse action, shall be reported to the Commissioner at the discretion of the Division Director.
4. The Division Director shall assign administrative investigations to a section supervisor or designee for investigation.
5. Completed administrative investigations and internal affairs investigations shall be reviewed by the Division Director who shall within thirty days determine the disposition of the complaint and the appropriate level of discipline, if required.
6. Within thirty days of receipt of the completed case file, the Division Director or designee shall inform the complainant in writing of the results of the investigation. If the Division Director initiates an adverse action based on the complaint investigation, the Division Director may wait until the effective date of the action before notifying the complainant.
7. After final adjudication of the complaint, the Division Director shall furnish the original investigative case file, the notice of the final adjudication of the complaint and/or any copies of the case file, to the Office of Professional Standards for retention. No duplicate copies of the investigative file shall be retained by the case investigator or at any administrative level within the Department other than by the Office of Professional Standards.

E. Responsibilities of the Director of the Office of Professional Standards

1. The Director of the Office of Professional Standards shall manage the operation of the Division and shall report directly to the Commissioner.
2. The Internal Affairs Unit is a part of the Office of Professional Standards and is responsible for the investigation of complaints made against department employees and other duties assigned by the Division Director.
3. The Internal Affairs Unit of the Office of Professional Standards shall maintain a record of all complaints filed against the department or its employees. Citizen complaints and internal department complaints shall be assigned an investigative case number by the Office of Professional Standards. Case numbers shall be assigned numerically and in sequence by calendar year as received by the Office of Professional Standards. This case number shall be provided to the investigator and shall be included on all documentation relating to the investigation. Completed administrative investigations and internal affairs investigations shall be maintained in a secure area in the Office of Professional Standards.
4. The Office of Professional Standards shall maintain an electronic database and shall provide the Commissioner and Division Directors with periodic statistical data relating to citizen complaints and internal department complaints. The Office of Professional Standards shall compile annual statistical summaries based upon the records of internal affairs investigations and administrative investigations. This information shall be made available to department employees and the public through the Public Information Office.
5. Complaints of misconduct against Department employees shall be forwarded by Division Directors to the Director of the Office of Professional Standards who shall review complaints for completeness and gather statistical data. The Office of Professional Standards shall prepare a case file folder for each complaint and at the conclusion of the investigation all investigative reports shall be retained in this case file folder.
6. The Director of the Office of Professional Standards shall confer with the Division Director to determine if the circumstances of the complaint require an administrative investigation or an internal affairs investigation. A decision will be made as to which entity will conduct an investigation into the matter.
7. Completed internal affairs investigations shall be reviewed for completeness and a copy of the completed investigation shall be forwarded to the accused employee's Division Director for appropriate action.
8. The Director of Legal Services shall be provided a copy of the case summary of each internal affairs investigation.
9. Open or pending complaint investigation files shall be released only to the Commissioner, the accused employee's Division Director, or the Director of Legal Services Division.
10. Internal affairs investigations, which tend to support the finding that a Department employee has committed a criminal act, shall be forwarded to the prosecutor with appropriate jurisdiction for a decision as to whether the conduct of the Department employee warrants criminal prosecution.

8.02.7 Final Adjudication of the Complaint

Complaint investigations shall be documented in an investigative report that includes all relevant findings of fact. The report shall include a determination as to the final disposition of the complaint.

A. The Investigative File

1. All documentation in the investigative file shall include the case number assigned by the Office of Professional Standards.
2. The investigative file shall contain the initial complaint and corresponding notification letters and department correspondence relating to the complaint.
3. The investigative file shall include interview summaries that include the full name, date of birth, address and telephone number of department employees and civilian witnesses.
4. If typed transcripts of interviews are prepared, they shall be included in the investigative file.
5. All evidence and/or documentation that support the investigator's conclusions shall be included.
6. A case summary shall be prepared that addresses each element of the complaint and the information relied upon by the investigator to support the investigator's conclusion of facts.
7. The case summary shall include a disposition of the complaint and any additional findings discovered during the course of the investigation.

B. Disposition of the Complaint

1. Sustained-This disposition shall occur when there is sufficient evidence to establish that an incident did occur and facts and circumstances support a determination that the actions of the employee constitute misconduct.
2. Not Sustained-This disposition shall be made when there is insufficient evidence to prove or disprove the complaint or incident.
3. Exonerated-This disposition shall occur when there is sufficient evidence to prove that an act or incident did occur, but the employee's actions were justified, lawful and proper.
4. Unfounded-This disposition shall be made when there is sufficient evidence to prove that the complaint or incident is false or not factual and did not occur.
5. No Investigation Warranted-This disposition shall be made when it is determined that there is no substantial violation of departmental policy, or the actions of the employee have no direct relationship to employment by the department.

- C. Complaint dispositions shall be entered into the Employee Tracking System (ETS) by the appropriate Troop/Region/Unit.