

# **DAVIS POLICE DEPARTMENT**

## **CITIZEN COMPLAINT PROCEDURE/INTERNAL INVESTIGATIONS Policy and Procedure 1.07-A**

### **DEPARTMENT MANUAL**

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**Citizen complaints**

**Complaints by citizens**

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**Police Officer's Bill of Rights**

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## **I. PURPOSE**

The appropriate response to complaints of alleged police misconduct is essential to preserving the integrity of, and public confidence in, the Davis Police Department. The Police Department will investigate complaints against its personnel in a prompt and professional manner and in compliance with laws governing the investigation of law enforcement employees. Such investigations will compile all pertinent facts and circumstances surrounding the allegation and render a fair and just finding for the complainant and the police employee. For the purposes of this policy, employee includes volunteer.

## **II. POLICY & PROCEDURE**

### **A. Source & Acceptance of Complaints**

1. A request made to any employee to speak to a Department supervisor about possible employee misconduct or the possible mishandling of an incident or call for service shall be interpreted as a complaint. Such requests to speak to a supervisor will be accepted and the Watch Commander or a patrol supervisor shall be summoned, if one is available. This type of request takes precedence over routine supervisory duties or lower priority calls for service.
2. The initial responding supervisor should assess the initial complaint and interview the complainant, if they are willing to speak to the supervisor. This will provide an initial forum for a citizen to resolve what may not actually be a complaint about an employee, but an inquiry or objection to a policy or procedure, a law, or the handling of an incident they witnessed or were involved.
  - a. If a supervisor is not immediately available to speak to the complainant, the name and phone number of the complainant shall be provided to a patrol supervisor, as soon as one is available. The supervisor should attempt to contact the complainant prior to the end-of-watch, or at the very least, ensure the on-coming supervisor contacts the complainant during the on-coming watch.
  - b. For the purposes of this policy, a supervisor includes the duty Watch Commander, sergeants, supervisors, managers, and administrators.

- c. A supervisor should record the contact or take notes to ensure the statement can be later recalled and documented if the matter is investigated. If the situation warrants, the supervisor may proceed under the provisions of II, B, 1 below.
3. A complainant is not required to speak to a supervisor prior to filing a written complaint. However, complaining parties should generally be referred to a supervisor who can potentially resolve the complaint, provide a written complaint form, and/or offer assistance to the complainant if necessary.
4. A complainant who does not request to speak with a supervisor may receive a citizen complaint form at the front counter of the Davis Police Department or at the City Manager's Office. Citizen Complaint Forms are also available on the Davis Police Department website. The completed form may be returned at the counter, mailed to the Davis Police, given to the Police Ombudsman, or turned into the City Manager's Office. Any non-supervising employee receiving a written complaint by any method shall proceed as specified in II, A, 6 below.
5. A supervisor receiving a formal complaint shall provide the complainant with a copy of their statement as required by 832.7(b) P.C. The supervisor shall document on the complaint form that a copy was provided to the complainant. If the complainant's statement is received by mail or other means, the Professional Standards Unit will mail a copy back to the complainant, noting the citizen complaint number on their copy for future reference. The date and fact that copies were made will be noted on the original copy of the complaint.
6. All written complaints received by the Police Department, by whatever means, shall be immediately forwarded to the Assistant Police Chief for review and classification. Anonymous complaints will be investigated to the extent possible, recognizing the inherent limitations of such complaints.
7. The supervisor receiving a written complaint is not responsible for conducting any investigation, unless there are exigent circumstances requiring an immediate response. In that instance, the receiving supervisor shall notify the Assistant Police Chief, or in their absence the Patrol Operations Captain or the Commander charged with oversight of Professional Standards Unit, as soon as possible for further direction.
8. The City of Davis Independent Police Ombudsman may meet with complainants and assist them in determining how to proceed with their complaint. To this end, the Ombudsman may attempt to resolve complaints in any proper manner, and in conformance to this policy and within law. The Professional Standards Unit may facilitate any meeting between the Ombudsman and any employee, subject to the consent of the involved employee. The Professional Standards Unit will be responsible for generating any reports or memoranda concerning involvement of the Ombudsman in resolving any complaint.

## B. Classification of Complaints

### 1. Category III- Informal Complaint or Inquiry

- a. In those cases where the initial receiving supervisor receives an inquiry or complaint directly from a complaining party and, after speaking to the complainant, it is determined that the complainant will be satisfied with having the supervisor relay any feedback or concern directly to an employee, without a formal investigation, a

complaint may be classified as an “informal complaint”. An informal complaint may be documented subject to the provisions of this policy; however, formal corrective action can not result.

1. A supervisor retains the ability to request an internal investigation if the alleged conduct is particularly grievous or criminal in nature, regardless of whether the complaining party agrees to cooperate in investigating the allegation or not.
- b. A supervisor should, absent extenuating circumstances or in those cases where the allegations made are such that there is no reasonable basis for believing that any misconduct occurred, conduct a performance review of the matter to determine whether the incident should be documented in the employee’s performance file. As a general rule, allegations of dishonesty, excessive force, bias policing, and serious constitutional violations will be reviewed. A performance review, for the purposes of this policy, is defined as an informal examination of the incident complained about, with an emphasis on the manner in which the employee performed their job tasks and how that manner may have contributed to the complaint.
- c. A supervisor may counsel an employee regarding an informal complaint. For the purposes of this policy, personnel counseling is defined as a process in which a command or supervisory officer meets with an employee in a non-punitive setting to discuss the employee’s performance. Counseling sessions employ techniques designed to reinforce good performance, improve poor performance, and when appropriate, correct behaviors that precipitate or contribute to complaints and/or allegations of misconduct. The counseling defined in this policy is intended to be a positive tool to employees in reaching a higher level of effectiveness. Supervisors are encouraged to use counseling sessions to help improve communication with employees. An employee may bring a representative with them to a scheduled counseling session. Counseling may be documented in the employee’s Division performance file as part of the performance review.
- d. A supervisor may provide or recommend training to an employee. Training is a non-punitive tool used to make members more efficient/effective by providing instruction and practice. Training can be either in-house or outside training, specific to the needs of the employee and the Department. Training should be documented in an employee’s performance or personnel file, as appropriate.
- e. A supervisor shall, prior to placing any document created pursuant to this policy, provide a copy to the Division Commander for review. A copy shall also be provided to the employee, who should initial the document before it is placed in any file. Should the employee refuse to initial the document, the supervisor shall make a notation on the document that the employee had an opportunity to review it and they refused to initial it. An employee may respond in writing within 30 days to any document which is adverse to their interest and placed in any file.
- f. A copy of the performance review will be maintained in the employee’s Division performance file and may be used pursuant to the provisions of PP 1.03-C, Peace Officer Personnel Files. Documentation shall be in the form of a short summary of the incident and what actions, if any, were taken. The memorandum shall contain the complainant’s name, address, phone number, and any other identifying information. The original copy of the document shall be forwarded, through the chain of command, to the

Professional Standards Unit which will be responsible for filing and maintaining the document in the appropriate internal file for the required statutory period. A performance review and any documentation of such is a non-punitive action.

2. Category II Formal Complaint

a. Category II complaints are those formal complaints of a minor nature that, if found to be true, would likely result in either informal or minor corrective action, as described in this policy (corrective action of Written Reprimand or less). Some examples of minor complaints include those where the allegations are:

1. Improper procedure.
2. Poor or inadequate service.
3. Rude conduct.
4. Use of improper language.
5. Discourteous operation of a Department vehicle.

3. Category I Formal Complaint

a. Category I complaints are all other complaints of a serious nature, which will be formally investigated and could result in major corrective action (more than a Written Reprimand). The Assistant Police Chief may classify any complaint, regardless of the nature of the complaint, as a Category I Formal Complaint and order a full investigation. Examples include, but are not limited to, significant violations of Department policy and procedure, such as:

1. The application of force and/or the use of excessive force or brutality.
2. Corruption/dishonesty.
3. False arrest, allegations of bad faith Fourth Amendment violations, or other civil rights violations.
4. Bias policing, racial/ethnic slurs or complaints of serious discourtesy.
5. Criminal misconduct.

### **III. CATEGORY I & II CITIZEN COMPLAINT INVESTIGATIONS**

A. Formal Complaint Investigation Process

1. If possible, all citizen complaints will be documented on the Davis Police Department Citizen Complaint Form. Pages One and Two shall be completed by the complainant and the investigating supervisor. However, any and all written complaints and/or attachments submitted by the complainant will be accepted.
2. After the Citizen Complaint Form is completed, it shall be immediately forwarded to the Assistant Police Chief for review, subject to the provisions of II, A above. The Assistant Police Chief shall classify the complaint as a personnel complaint, a complaint about department policy or procedure, or a complaint without merit.

**a. Personnel Complaints- Category II:**

1. The Assistant Police Chief may designate a complaint as a Category II complaint. If that is done, the Assistant Chief will indicate that on the Citizen Complaint Internal Face Sheet, which is attached to all formal complaints. The Assistant Chief will then forward the complaint to the Commander charged with oversight of Professional Standards Unit.

2. The Professional Standards Unit shall issue the complaint a file number and ensure that the complainant has received a copy of their complaint as specified in II, A, 5 of this policy.
3. Professional Standards will then turn the complaint over to the Division Commander responsible for the employee(s) named in the complaint with a deadline for the completion of the investigation. Most complaints should be resolved within 30 days, absent extenuating circumstances. Professional Standards may extend the deadline for good cause, but the good cause shall be specified in writing as part of the investigation. If multiple Divisions are involved, Professional Standards will assign the complaint to one of the involved Divisions for investigation and notify the Commander of the other involved Divisions of the investigation and who will be charged with oversight. All assignments will be documented on the Citizen Complaint Internal Face Sheet.
4. The Division Commander is responsible for either conducting the investigation or assigning it to a supervisor of equal or greater rank than the employee(s) being investigated. The assigned supervisor should have had no direct involvement in the incident being investigated.
5. The assigned investigator is responsible for conducting an investigation into the incident. When a supervisor is investigating a complaint in which unusual circumstances exist, or where points of policy and procedure clarification is necessary, they shall consult with the Professional Standards Unit to maintain consistency in the investigative process. If new or additional facts become known to the investigator which would likely move the complaint to a Category I allegation, the investigator should temporarily stop the investigation and immediately notify the Division Commander, who should then consult with the Assistant Police Chief. At the direction of the Assistant Police Chief, the investigation may be re-assigned to the Professional Standards Unit.
6. After the investigation has been completed, the report and recommended findings of that supervisor shall be returned to the Division Commander. The Division Commander of the investigating supervisor is responsible for reviewing the completed report and making the final finding. If any allegation has a "sustained" finding, the entire investigation shall be forwarded to the Professional Standards Unit for review. Upon concurrence of findings from the Professional Standards Unit, the Division Commander for the involved employee is responsible for imposing final corrective action, subject to the provisions of this policy. Should the need arise, the appropriate Bureau Commander will make the final finding.
7. The completed investigation and all supporting documents will be forwarded to the Professional Standards Unit. The Professional Standards Unit is responsible for filing the final document, sending out disposition notices to the complaining parties, ensuring the employee has been notified of the final finding, and briefing command staff on the disposition of all complaints.
8. Any evidence, recordings, photographs, or original documents not attached to the investigation shall be placed in evidence and recorded using the complaint number.

**b. Personnel Complaints- Category I:**

1. The Assistant Police Chief may designate a complaint as a Category I complaint. If that is done, the Assistant Chief will indicate that on the Citizen Complaint Internal Face Sheet, which is attached to all formal complaints. The Assistant Chief will then forward the complaint to the Commander charged with oversight of Professional Standards Unit.
2. The Professional Standards Unit shall issue the complaint a file number and ensure that the complainant has received a copy of their complaint as specified in II, A, 5 of this policy.
3. The Professional Standards Unit is generally responsible for investigating all Category I complaints. The assigned investigator should have had no direct involvement in the incident being investigated.
4. The assigned investigator is responsible for conducting an investigation into the incident. Unless good cause exists for an extension, investigations should be completed within 60 day of assignment. After the investigation has been completed, the report and all supporting documents will be forwarded to the Commander charged with oversight of the Professional Standards Unit. The report will be reviewed and then forwarded to the Police Chief, who will make the final finding.
5. The completed investigation and all supporting documents will be forwarded to the Professional Standards Unit. The Professional Standards Unit is responsible for filing the final document and sending out disposition notices to the complaining parties.
6. Any evidence, recordings, photographs, or original documents not attached to the investigation shall be placed in evidence and recorded using the complaint number.

**c. Complaints Solely Regarding Department Policy or Procedure:**

1. Complaints about policy or procedure shall be assigned a file number and be forwarded to the appropriate Division Commander for review.
2. The Division Commander shall review the complaint, conduct any needed investigation or follow-up and, when appropriate, make recommendations to the Police Chief regarding any changes to department policy or procedure that need to be made.
3. These complaints shall be kept separate from all other complaints.

**d. Complaints “Without Merit”:**

1. A complaint that is determined to be without merit may be closed at intake.
2. For the purposes of this policy, a complaint that is without merit is one that is totally without merit and for the sole purpose of harassing an opposing party.
3. Complaints determined to be without merit shall be kept in a separate file from all other complaints. The Assistant Chief should document on the complaint why it was determined to be without merit and closed.

4. When an officer receives a complaint that is determined to be without merit, they shall be notified in writing of the complaint and disposition.

## B. Alternative Resolutions to Formal Complaints

1. City Mediation services are an option for resolving citizen complaints that are limited to minor allegations where the complaint concerns the employee's perceived attitude or behavior (e.g., rude conduct).
  - a. Participation shall be voluntary on the part of all involved parties. Refusal to participate shall be allowed without consequence.
  - b. Complainants agreeable to mediation shall be referred to City Mediation Services after approval by the Assistant Police Chief.
  - c. Complaints referred to and accepted for mediation shall preclude formal corrective action being taken against an employee.
  - d. Professional Standards will be responsible for documenting the mediation and properly filing all paperwork associated with the original complaint.
2. Formal complaints may, at any time, be "Withdrawn" entirely or handled as informal complaints at the request the complainant.
  - a. When this procedure is used, the formal written complaint shall be kept in the citizen complaint file and shall have the notation "Withdrawn" placed in the findings section.
  - b. A memorandum will be attached giving a summary of the withdrawal request. If possible, the complainant should sign the request.
  - c. The Department retains the ability to initiate an investigation if the alleged conduct is particularly egregious, criminal in nature, involves employee dishonesty, involves excessive force, or alleges bias policing, regardless of whether the complaining party agrees to cooperate in investigating the allegation or not.

## C. Investigative Process

1. Investigations of sworn officers shall be in compliance with section 3300 et seq. of the Government Code, commonly known as the Peace Officer's Bill of Rights. Investigations of all other personnel shall be in compliance with all applicable statutory and case law and in compliance with the City Personnel Rules.
2. Employee's who are interviewed or interrogated, shall not provide misleading, untruthful, inaccurate, or partially misleading, untruthful, or inaccurate information to the investigator, nor shall any employee fail to disclose any pertinent facts or information within their knowledge to the investigator.
3. The investigator shall record all interrogations or interviews conducted as part of an investigation.

## **IV. INTERNAL INVESTIGATIONS**

### A. Initiation of Internal Investigation

1. Any supervisor may request an internal investigation when there is cause to believe that an employee has engaged in conduct that is in violation of City or Department Rules and Regulations or in violation of a criminal or civil statute.

When choosing whether to initiate an internal investigation, the supervisor should consider whether the conduct warrants a formal investigation or can be handled through immediate counseling or training by the employee's supervisor.

2. A supervisor requesting an internal investigation shall, by Memorandum through the chain of command, request the Assistant Police Chief initiate an investigation. The Assistant Police Chief may reject the request, recommend an alternate disposition, or assign the matter to be investigated.
3. The Assistant Police Chief will notify the Police Chief when an internal investigation is initiated.

#### B. Internal Investigation Procedure

1. An internal investigation will be conducted in the same manner as a citizen complaint. Possible findings, the resolution of sustained complaints, and appeal from corrective action are outlined in sections VII and VIII of this order.

## **VI. CRIMINAL INVESTIGATIONS**

### A. Initiation of Criminal Investigation

1. Any employees who become aware of any criminal misconduct by an employee who is either on or off duty, or becomes aware of any allegation of criminal misconduct by an employee who is either on or off duty, shall immediately notify the Watch Commander or other appropriate supervisor of the misconduct or allegation of misconduct. Non-supervisors shall not conduct criminal investigations against an employee.
2. The Watch Commander or supervisor shall immediately notify the Assistant Police Chief of any allegation of criminal misconduct by an employee. In the absence of the Assistant Police Chief, the Patrol Operations Captain, the Police Chief, the Professional Standards Lieutenant, or one of the Patrol Commanders, in that order, should be notified of the allegation.
3. If there are exigent circumstances requiring an immediate police response or investigation of the criminal acts, or alleged criminal acts, the Watch Commander shall be responsible for conducting the preliminary criminal investigation. In the absence of exigent circumstances, the Assistant Police Chief shall direct any criminal investigation and/or any internal investigation of criminal misconduct by an employee.
4. The Assistant Police Chief, in consultation with the Police Chief, may request the Yolo County District Attorney's Office conduct any criminal investigation against an employee.

## **VI. ADMINISTRATIVE FINDINGS**

### A. Possible Findings

1. Upon receipt of the completed investigation, the Division Commander or Police Chief, depending on the category of the complaint, will render one of the following findings:
  - a. **Unfounded**- The investigation has determined that the act(s) complained of did not occur.

- b. **Not Involved-** The investigation determined that the accused officer was not involved in the alleged act.
- c. **Not Sustained-** The investigation failed to disclose sufficient evidence to prove or disprove the complaint.
- d. **Sustained-** The investigation disclosed sufficient evidence to substantiate the allegation or wrong doing.

***NOTE: The standard for burden of proof shall be “clear and convincing evidence”.***

- e. **Exonerated-** The act complained of did occur, but the investigation revealed the act was justified, lawful, and in full compliance with Departmental regulations.
- f. **Suspended-** The investigation cannot be completed due to the inability to contact an essential witness.
- g. **Withdrawn-** The investigation is withdrawn at the request of the complaining party.
- h. **Without Merit-** The allegation of misconduct is totally without merit or for the sole purpose of harassing an employee. “Without merit” is synonymous with “frivolous” as mentioned in 832.5 (c) P.C. and 128.5 of the Code of Civil Procedure.

#### B. Review

- 1. The appropriate Bureau Commander and Division Commander shall meet with any employee who receives 3 or more internal or citizen complaints within any 12 month period, regardless of the findings of those complaints. The meeting shall not constitute corrective action and shall be for the purpose of determining whether the employee needs additional training, guidance, or resources to aid them in their position.

#### C. Written Findings

- 1. Employees who are the subject of an investigation will receive written notification of the administrative finding within 30 days of the finding being made. If the investigation results in a sustained finding, the employee shall receive a full copy of the investigation prior to formal corrective action being imposed, except those portions deemed to be confidential. A record shall be kept when any person receives a copy of an investigation. That record shall be kept with the original investigation.
- 2. The complainant will be advised of the finding of the investigation as permitted by Section 832.7 P.C.

## **VII. RESOLUTION OF SUSTAINED INVESTIGATIONS**

#### A. Correction Action

- 1. Action on a sustained complaint may include:
  - a. \*Oral Warning or Counseling
  - b. \*Training
  - e. \*Documented Counseling

- f. Written Reprimand
- g. Suspension
- h. Demotion
- i. Discharge
- j. Criminal complaint

***NOTE: \* designates that the action is not subject to appeal.***

**B. Appeal from Discipline**

- 1. Corrective actions may be appealed in accordance with the Personnel Rules and Regulations of the City of Davis.

**C. Carrying out of Corrective Action/Training**

- 1. The appropriate Division Commander is responsible for carrying out any imposed corrective action. Professional Standards will ensure all paperwork associated with the corrective action is properly filed.

**D. Right to Respond to Adverse Comment**

- 1. Any employee may respond to any adverse comment placed in any file. The response shall be submitted within 30 days of the entry of the adverse comment to the file.

**Landy Black  
Police Chief  
1/93**

**Rev. 4/93**

**11/94 (2)**

**8/96**

**7/97**

**9/99**

**12/99**

**10/01, references to Professional Standards Lt. added and changes to III, 2, a, 5.**

**9/03, section VI added**

**7/10 updated Police Captain to Assistant Police Chief**

**2/08 Category II complaints added and changes made for all categories and disposition.**

**Reviewed 12/00**

**1/02**

**1/03**