

HONOLULU POLICE DEPARTMENT

POLICY SUPPORT OPERATIONS

February 26, 2016

Policy Number 5.01

COMPLAINTS AND INTERNAL INVESTIGATIONS

POLICY

Anyone who reports a complaint (administrative or criminal) about the Honolulu Police Department (HPD) or its employees shall be courteously received and appropriately assisted by HPD personnel. All complaints shall be investigated by the Professional Standards Office (PSO) or an appropriate element and result in a final disposition.

PROCEDURE

I. COMMAND

The major and staff of the PSO operate exclusively as staff officers; they give orders only under circumstances where the failure to do so immediately might jeopardize the department's reputation or the accomplishment of its mission. In such instances, the order will be issued in the name and by the authority of the Chief of Police.

II. STATUTE OF LIMITATIONS

No employee shall be subjected to an administrative investigation that has been filed more than one year from the date of the alleged incident. However, administrative investigations involving criminal misconduct may be initiated at any time within the criminal statute of limitations as provided by law.

III. PROCESSING COMPLAINTS AGAINST DEPARTMENTAL PERSONNEL

A. Criminal Law Offenses

1. The Criminal Investigation Section of the PSO shall be responsible for investigating all allegations of the involvement of departmental employees, police commissioners, and police commission staff members in criminal activities. The PSO may call upon investigative units within and outside of the department to assist in any investigation.
 - a. During normal working hours, the officer initiating the report or the officer's supervisor shall notify the Criminal Investigation Section of the PSO of the allegations.
 - b. At all other times, the officer initiating the report or the officer's supervisor shall notify the on-duty Criminal Investigation Division (CID) lieutenant of the allegations. The CID lieutenant shall in turn notify the commander or designee of the PSO.
 - c. Notifications by officers initiating the reports should be made from the scene immediately upon determining that a crime has been committed.
 - d. Copies of all reports shall be sent or faxed to the PSO no later than the end of the initial investigating officer's tour of duty.
2. The accused employee's commander shall be notified as soon as practical.
3. When informed by another law enforcement agency that an officer is being investigated, the Chief of Police shall be notified first.

- a. Unless the notification will compromise the investigation, the PSO shall then inform the commander of the officer involved and ask the commander to inform that officer.
- b. If the officer is on duty, the watch commander shall request that the officer be available to meet with the investigator(s). If the officer is off duty, he or she will be asked to be available on the next work day.
- c. The officer shall not be coerced, forced, escorted, or transported by HPD officials for further investigation by other law enforcement agencies.

B. Misconduct

1. "Misconduct," in this context, means the violation of any section of the Standards of Conduct or civil service rules. Procedures for handling misconduct investigations are outlined in sections IV and V below.
2. Misconduct in the Performance of Official Actions

- a. A complaint of an incident involving misconduct by an officer that is received within 60 days of the incident from someone who is not a departmental employee shall be referred to the Honolulu Police Commission (HPC) for investigation.

The person making the referral should give the complainant an HPC Personnel Complaint Information Referral Card, HPD-407 form.

- b. A complaint of an incident involving misconduct by an officer that is received after 60 days of the incident from someone who is not a departmental employee shall be referred to a supervisor. The supervisor shall ensure that the complaint is notarized and referred to the PSO. The PSO may refer the investigation to the elements involved.

- c. If someone who is not a departmental employee lodges a complaint involving misconduct by a civilian employee, the complainant shall be referred to a supervisor. The supervisor shall ensure that the complaint is notarized and referred to the PSO. The PSO may refer the investigation to the elements involved.
- d. A departmental employee lodging a complaint involving misconduct by an officer or a civilian employee shall submit a memorandum to the commander of the PSO detailing the facts of the incident. The memorandum should be routed through the proper chain of command. The PSO may refer the investigation to the elements involved.

3. Misconduct Outside the Performance of Official Actions

- a. If someone who is not a departmental employee lodges a complaint involving misconduct by an officer, the complainant shall be referred to a supervisor. The supervisor shall ensure that the complaint is notarized and referred to the PSO. The PSO may refer the investigation to the elements involved.
- b. A departmental employee lodging a complaint involving misconduct by an officer shall submit a memorandum to the appropriate bureau chief/deputy chief detailing the facts of the incident. The bureau chief/deputy chief may request the assistance of the PSO in the investigation.
- c. Complaints alleging misconduct by a civilian employee outside the performance of an official action are generally not investigated by the department. Violations of departmental directives or rules governing public employees that occur in a setting that can be considered an extension of the workplace may be investigated.

C. Individual/Family Matters

Complaints about individual/family matters that do not involve criminal law or the Standards of Conduct or a violation of civil service rules (e.g., the payment of debts or personal disputes) shall be referred to the Human Resources Division (HRD).

IV. INTERNAL INVESTIGATION OF MISCONDUCT COMPLAINTS

- A. All complaints of misconduct (those described in section III B above) are investigated either by the HPC or an element of the department.
1. The HPC follows its own procedures in such investigations.
 2. Completed and sustained police commission investigations referred to the Chief of Police for disposition shall first be referred to the PSO. This will ensure compliance of all procedures outlined in this section.
 3. The procedures outlined in this section shall also apply to all complaints of misconduct investigated by elements of the department.
- B. All complaints shall be investigated expeditiously. Each investigation is to be completed within 60 days of receipt of the initial complaint, unless exceptional circumstances prevent completion and an extension is granted by the commander of the PSO. A request for an extension shall be as follows:
1. The element commander shall contact the PSO to request an extension. The PSO tracking number and an explanation for the extension shall be provided; and
 2. If an investigation can not be completed within 120 days of receipt of the initial complaint, the commander of the element shall prepare a memorandum to the PSO commander to request any further extensions. The memorandum shall be forwarded to the PSO via channels.

C. When the investigation reaches the point that the accused employee is to be notified of the complaint and investigation, the assigned investigator shall complete the internal complaint, HPD-367 or HPD-367A form, and the internal investigation; HPD-367B, HPD-367C, HPD-367C1, HPD-367C2, HPD-367C3, HPD-367D, and HPD-367E forms. The investigator shall also obtain a complaint tracking number.

D. Complaint Tracking

1. A tracking number will be used to identify the investigation and will appear as the complaint number in all reports and other documents.
2. The PSO will assign the tracking numbers to the investigations.
3. Other elements of the department shall contact the PSO to obtain tracking numbers for their investigations. The element commander or a designee shall contact the PSO in person or by telephone during normal duty hours to report the investigation and obtain a tracking number.
 - a. When it is necessary to serve an HPD-367 or HPD-367A form outside of normal duty hours, the contact shall be made beforehand or at the first opportunity on the next normal duty day.
 - b. When a complaint is received and the entire investigation is completed before the next normal duty day, the report of the investigation may be forwarded to the next level of command without a tracking number. However, the element commander or designee shall still contact the PSO on the next normal duty day to report the complaint and to have it assigned a tracking number.
4. The PSO shall record the information received about each complaint on the PSO Complainant Tracking, HPD-407B form.

E. Employees' Rights and Responsibilities

1. In the conduct of investigations and interrogations, departmental personnel are entitled to the rights and safeguards afforded by the constitutions and procedures of the United States, the State of Hawaii, the City and County of Honolulu, the department, and any applicable collective bargaining agreement.
2. Because of the public trust and responsibility borne by them, departmental personnel are expected to give honest replies to questions regarding their official duties and/or fitness to hold public office. Consequently, during any departmental investigation or proceeding, it shall be the duty and responsibility of each member of the department to provide truthful, full, and direct answers to all questions regarding his or her duties and actions as a member of the department.
3. Personnel shall be advised of these rights and responsibilities via the internal investigation, HPD-367B, HPD-367D, and HPD-367E forms.

F. Each completed investigation report shall be checked for thoroughness and accuracy by the responsible division-level commander.

V. REVIEW AND DISPOSITION OF MISCONDUCT INVESTIGATIONS

Misconduct investigations are reviewed and disposed of in accordance with the Standards of Conduct and civil service rules.

- 12-9-2020
- A. When the HPC sustains charges against an officer or employee or advises the Chief of Police that a case warrants attention, the commission's report will be forwarded to the Chief of Police.

1. The Chief of Police will forward the case via the appropriate deputy chief to the PSO for investigation. Additional investigative work (if any is needed) will be completed by the PSO and/or the division-level command to which the officer is assigned.
 2. The completed investigation report shall be processed as outlined in sections V B through D below.
- B. When the investigation concerns an officer at the rank of captain or above, the investigation report shall be forwarded to the Chief of Police via the deputy chiefs. The Chief of Police shall meet with the deputy chiefs to determine what action is warranted.

For all other personnel, sections V C and D below apply.

- C. When the investigation concerns a violation for which disciplinary action may be taken at the element level, the commander shall provide the accused employee an opportunity to appear in person or to provide a written response to the charge(s) if the corrective action that may be taken will affect an employment right (e.g., discharge, demotion, or suspension). A written or electronic notice of the hearing shall be delivered to the accused employee at least 14 calendar days prior to the hearing date (refer to Attachment 3 for a sample notification letter). If the accused employee elects to appear in person, the employee shall be entitled to have a union representative present.
1. If the commander determines that no disciplinary action is warranted after notifying the bureau chief, the investigation report need not be forwarded to the Office of the Chief. The division-level commander need only forward a brief memorandum via his or her assistant chief to the commander of the PSO, giving the tracking number of the complaint, the commander's disposition of the complaint, and a brief statement of the reason(s) why no disciplinary action is warranted.

2. When disciplinary action is taken at the element level, the investigation report shall be submitted via channels to the Chief of Police and then forwarded to the PSO.
 3. Refer to Attachment 1 for details on the process for violations of Article VIII of the Standards of Conduct or civil service rules.
- D. When the investigation concerns a violation of Articles VI through VIII of the Standards of Conduct or civil service rules for which disciplinary action may be taken only by the Chief of Police, the investigation report shall be forwarded via channels to the Chief of Police, PSO, and Administrative Review Board (ARB).
1. The ARB consists of the six assistant chiefs and two deputy chiefs. The board is chaired by the deputy chief of Administrative Operations or a designee. A majority of the board members constitutes a quorum for the conduct of business.
 2. Each completed investigation report shall be circulated by the chairperson for review by the other board members and the division-level commander of the accused employee.
 3. The division-level commander or designee of the accused employee shall appear before the board at the chairperson's call. The commander or designee shall provide a synopsis of the case and testimony about the work history and disciplinary record of the employee and make recommendations concerning the disposition of the case.

4. The accused employee shall be provided an opportunity to appear before the board in person or may provide a written response to the charge(s) if the corrective action that may be taken will affect an employment right (e.g., discharge, demotion, or suspension). The accused employee may include any mitigating circumstances for the board's consideration. A written or electronic notice of the hearing shall be delivered to the accused employee at least 14 calendar days prior to the hearing date (refer to Attachment 3 for a sample notification letter). If the accused employee elects to appear in person, the employee shall be entitled to have a union representative present.
5. The board, after considering all pertinent reports and testimony, shall assign one of the following classifications to each complaint:
 - a. Complaint unfounded: The complaint is not based on facts or the incident upon which the complaint is based did not occur;
 - b. Complaint not sustained: There is insufficient evidence to prove or disprove the allegation;
 - c. Employee exonerated: The incident upon which the complaint is based occurred but the employee's actions were lawful and proper; or
 - d. Complaint sustained: There is sufficient evidence of misconduct to support the allegation or to justify disciplinary action.
6. When a complaint is sustained, the board's findings shall include a recommendation for appropriate disciplinary or nondisciplinary action, such as:
 - a. Counseling - oral or divisional;
 - b. Training;

- c. Written reprimand;
 - d. Suspension for a specific number of days;
 - e. Demotion; and/or
 - f. Separation from police service (voluntary resignation, dismissal, or termination of initial probationary appointment).
- 7. The board shall submit its findings and recommendations in writing to the Chief of Police.
 - 8. The Chief of Police shall decide what disciplinary action to take. A copy of any disciplinary action taken by the Chief of Police (e.g., letter of suspension) shall be placed in the employee's file in the HRD.
 - 9. In cases where the disciplinary action is termination, the HRD shall prepare both the Notice of Pending Termination and the Restriction of Police Authority.

Element commanders, upon receipt of these notices, shall serve them on the named officer and ensure that the instructions in the notices are fully carried out. The HRD shall submit copies of the Notice of Pending Termination and the Restriction of Police Authority to the State of Hawaii Organization of Police Officers.

10. Refer to Attachment 2 for details on the process for violations of Article VI through VIII of the Standards of Conduct or civil service rules.

VI. ANNUAL REVIEW AND ANALYSIS

A documented, annual review and analysis of administrative and criminal complaints within a calendar year, including those accepted by the HPC, shall be completed by the Management Analyst by March 31 of the succeeding year.

- A. The analysis should include the progress and effectiveness of recommendations made in previous years.
- B. The analysis shall be reviewed by the commanders of the Professional Standards Office (PSO), Human Resources Division, and Training Division.
 1. The purpose of the review is to identify actionable areas of improvement (e.g., policies, training, etc.) for issues that are indicated by the analysis.
 2. The PSO commander shall present the findings and recommendations of the committee to the ARB. The board shall then forward its final recommendation for approval by the Chief of Police.

12-9-2020

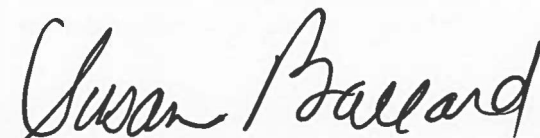
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- C. The final recommendations approved by the Chief of Police shall be documented in the annual review and analysis.

12-9-2020



SUSAN BALLARD
Chief of Police

Attachments

Post on bulletin
board for one week

Policy first issued
August 20, 2001

PROCESS FOR VIOLATIONS OF ARTICLE VIII OR
CIVIL SERVICE RULES FOR WHICH DISCIPLINARY
ACTION MAY BE TAKEN AT THE ELEMENT LEVEL

1. Hearing

Upon receipt and review of the investigative reports, the commanding officer will provide to the accused officer written or electronic notification of a hearing on the matter if the corrective action that may be taken will affect an employment right (e.g., discharge, demotion, or suspension). The notification will include a brief summary of the investigative findings, and the scheduled date of the hearing shall be at least 14 calendar days from the notification mailing date.

If the employee so chooses, the employee may either appear in person on the hearing date or submit a written response prior to the hearing date. If the employee chooses to request an appearance before the commander or to submit a written response, the employee must do so at least seven calendar days prior to the hearing date.

2. Appearance Requested

- A. The employee shall be entitled to have a union representative present. However, the representative is limited to a five-minute presentation. Furthermore, it is the employee's responsibility to obtain the union representation.
- B. After meeting with the employee and, if applicable, the union representative, the commanding officer shall review all available information and evidence and make a determination after consulting with his or her assistant chief.

3. Written Reply Submitted

The commanding officer shall review the employee's written response and all other available information and evidence and make a determination after consulting with his or her assistant chief.

4. No Response From Employee

The commanding officer shall proceed with the case and review all available information and evidence and make a determination after consulting with his or her assistant chief.

5. No Disciplinary Action Warranted

The commanding officer shall prepare a brief memorandum to the PSO commander providing the following:

- A. Complaint tracking number;
- B. Disposition of the complaint; and
- C. Brief rationale as to why no disciplinary action is warranted.

6. Disciplinary Action Warranted

- A. The commanding officer shall prepare the written Notice of Disciplinary Action, HPD-121 form. The notice shall include a short summary of the facts (sustained charges and evidence) and the disciplinary action.
- B. The commanding officer shall then serve the HPD-121 form to the employee.
- C. The completed investigation shall be forwarded to the PSO via channels.

PROCESS FOR VIOLATIONS OF ARTICLES VI THROUGH VIII
OR CIVIL SERVICE RULES FOR WHICH DISCIPLINARY
ACTION MAY BE TAKEN ONLY BY THE CHIEF OF POLICE

1. Hearing

Upon receipt and review of the investigative reports, the Administrative Review Board (ARB) will provide to the accused officer written or electronic notification of a hearing on the matter if the corrective action that may be taken will affect an employment right (e.g., discharge, demotion, or suspension). The notification will include a brief summary of the investigative findings, and the scheduled date of the hearing shall be at least 14 calendar days from the notification mailing date.

If the employee so chooses, the employee may either appear in person on the hearing date or submit a written response prior to the hearing date. If the employee chooses to request an appearance before the ARB or to submit a written response, the employee must do so at least seven calendar days prior to the hearing date.

2. Appearance Requested

- A. The division-level commander or designee of the accused employee shall appear before the ARB. The commander's presentation to the ARB should include a synopsis of the case, testimony about the employee's work history and disciplinary record, and recommendations concerning the disposition of the case.
- B. The employee shall be entitled to have a union representative present. However, the representative is limited to a five-minute presentation. Furthermore, it is the employee's responsibility to obtain the union representation.

3. Written Reply Submitted

- A. The employee's written response shall be provided to the ARB for consideration in the decision.

- B. The division-level commander or designee of the accused employee shall appear before the ARB on the designated hearing date. The commander's presentation to the ARB should include a synopsis of the case, testimony about the employee's work history and disciplinary record, and recommendations concerning the disposition of the case.

4. No Response From Employee

The ARB shall proceed with the case and review all available information and evidence prior to making a determination.

5. Determination

- A. After consideration of all available information and evidence, including the employee's written response (if submitted) and the presentation by the employee and/or union representative, the ARB shall assign one of the following classifications to the complaint:
 - 1. Complaint unfounded;
 - 2. Complaint not sustained;
 - 3. Employee exonerated; or
 - 4. Complaint sustained.
- B. The ARB shall submit its recommendation in writing to the Chief of Police.

(Print on letterhead)

(Initials)

(Date)

TO: (EMPLOYEE'S NAME)
FROM: (DEPUTY CHIEF/ELEMENT COMMANDER)
SUBJECT: ADMINISTRATIVE HEARING

Your involvement in PSO No. (PSO Case Number) has been reviewed, and the allegations are summarized below:

(Summary of Allegations)

You are being afforded the opportunity to be heard before any disciplinary decision is rendered. You may submit a written response or appear in person at the hearing at which time you may submit any additional evidence or testimony. Any new information you provide will continue to be covered by the Garrity Rights you received at the onset of the investigation. You and/or a union representative may make a presentation at the hearing. However, the union representative's presentation will be limited to five minutes. It is your responsibility to contact the union if you desire representation.

The hearing (at least 14 calendar days from notification) will be held in (location) on (day, date), at (time) hours. While you are waiting for your case to be heard, you may wait in (location).

If you choose to appear in person, you must notify me in writing within seven calendar days after receipt of this notice. In lieu of a presentation, you may elect to submit a written response. This written response must be received at least seven calendar days prior to the aforementioned hearing date. Any additional evidence or testimony you present will be given full and fair consideration. You will be notified via letter as to the final disposition of your case.

(Employee's Name)

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(Date)

If you choose not to respond or fail to appear as scheduled, your case will be decided on the information presented.

Should you have any questions or require additional information, please call
(element commander's name) at **(element commander's telephone number)**.

(DEPUTY CHIEF/ELEMENT COMMANDER)

(Element)

Received the original of this
notice on the _____ of
(month), (year) _____

SERVED BY:

(Employee's Name)

Signature

Date/Time