



# DIRECTIVES

## Oak Creek Police Department

**Effective Date:**

June 1, 1992

**Reviewed Date:**

May 15, 2019

**Sign-Off Date:**

May 23, 2019

**Title:**

### CITIZEN COMPLAINT / INTERNAL AFFAIRS POLICY

**Directive Number:**

4-1100

**Critical Policy**

Yes  No

**Open Record**

Yes  No

**Total Pages:**

9

**Applicability:**

All Employees

\*State Statute §66.312(3) – Law Enforcement Policies on...Citizen Complaint Procedures

### I. PURPOSE AND OBJECTIVES

The State of Wisconsin mandates, by WI §66.312(3), that each law enforcement agency shall have in writing and make available a specific procedure for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer employed by the agency.

The purpose of this policy is to comply with the state mandate, but also to provide a guideline in which the citizens may maintain a level of confidence in its Police Department; protect the integrity and reputation of Police Department personnel; provide the Department with an opportunity to identify and correct any shortcomings or deficiencies, whether actual or perceived; and, inform, educate and clarify any questions, misunderstandings, or misconceptions that have arisen as a result of contact with Police Department personnel.

It is further the purpose of this policy to establish an internal affairs function within the Oak Creek Police Department. This internal investigation process shall be invoked for all complaints against the Department or its employees.

### II. DISCUSSION

The internal affairs function is important for the maintenance of professional conduct in law enforcement. The integrity of the Department depends on the personal integrity and discipline of each employee. To a certain degree, the public opinion of the Department is determined by the quality of the internal affairs function in responding to allegations of misconduct by the Department or its employees.

The Department encourages citizens to bring to its attention legitimate grievances regarding misconduct by employees. It also recognizes that malicious and deliberate false accusations are occasionally made against the Department or its employees. Nevertheless, all accusations must be investigated to protect the integrity of the Department and its employees and to instill public confidence in the Department. In cases where someone knowingly makes a false complaint regarding the conduct of a law enforcement officer, they will be investigated for such false complaints, under WI §946.66. In some cases, the extent of the investigation may be limited to substantiating the falsity of the accusation.

### III. DEFINITIONS

- A. *Procedural Complaint* - A complaint based on actions that, if performed properly, are acceptable according to legal guidelines and department policy (i.e., complaints over towing vehicles, parking violations, traffic enforcement, etc.).

### III. DEFINITIONS - *Continued*

- B. *Minor Misconduct Complaint* - A complaint based on allegations of minor misconduct by employees of the department. Examples of minor misconduct include rudeness or verbal abuse by an officer, traffic infractions by an officer, or other similar conduct. Another determinant of minor misconduct is that the alleged action, if sustained, could result in disciplinary action ranging from verbal admonishment to limited suspension.
- C. *Serious Misconduct Complaint* - A complaint based on allegations of serious misconduct by employees of the department. Examples of serious misconduct include, but are not limited to, corruption, brutality, misuse of force, breach of civil rights, criminal misconduct, or repeated acts of minor misconduct. Another determinant of serious misconduct is that the alleged action, if sustained, could result in disciplinary action to include significant suspension, dismissal, or criminal charges.
- D. *Informal Inquiry* - A meeting between supervisory personnel and an employee who has become the subject of a procedural or misconduct complaint for the purpose of mediating the complaint or discussing the facts to determine whether a formal investigation should be initiated.
- E. *Internal Investigation* - The process of investigation into alleged acts of misconduct that, if sustained, may be the basis for filing disciplinary action and may lead to a criminal investigation.
- F. *Criminal Investigation* - The process of investigation into acts that, if sustained may be the basis for filing criminal charges.
- G. *Shift Commander* - Commanding officer, usually the shift lieutenant/manager, of an employee accused of misconduct.
- H. *Sustained* – Event is factual and actions were not within Department policy and/or were illegal.
- I. *Not Sustained* – Event is not factual. There may be some evidence, but such evidence is inconclusive.
- J. *Unfounded* – Event is not factual; no established facts exist.
- K. *Exonerated* – Event is factual, but actions were legal and/or within Department policy.

### IV. PROCEDURES

#### A. Internal Affairs

1. The internal affairs component shall exist within the police department for the purpose of investigating allegations of misconduct by department employees, monitoring the investigation of procedural and minor misconduct complaints, and maintaining records of all complaints against the agency and its employees.
2. The internal affairs component of the Oak Creek Police Department exists within the Administration Division.
3. The internal affairs component is comprised of the Administration Captain and Lieutenant of Detectives. As needed, the Captain may select ad hoc members for the purpose of conducting investigations.
4. Upon receipt of allegations of misconduct, the Chief of Police, Captain of Administration and Captain of Operations will meet to brief on the incident. The Chief of Police will make the determination of who will lead the investigation and if it rises to the level of being assigned an Internal Affairs (IA) case number.

#### IV. PROCEDURES - *Continued*

##### B. Authority and Responsibility Regarding Internal Affairs

###### 1. Individual Responsibility

- a. Each employee shall perform his/her duties and assume the obligations of his/her rank in the investigation of complaints of allegations or misconduct against any member of the department.
- b. Each employee shall cooperate fully with the Captain of Administration or their designee conducting such an investigation.
- c. Any employee who has, or is alleged to have, knowledge of circumstances surrounding an internal investigation or informal inquiry shall submit a written report on the matter, upon request by the Captain of Administration or their designee conducting such an investigation.

###### 2. Non-Supervisory Personnel

- a. When misconduct is observed or complaints of misconduct are received by non-supervisory personnel, such members shall immediately notify a supervisor of the matter.

###### 3. Supervisory Personnel

- a. When misconduct is observed or complaints of misconduct are received by a supervisor, that person shall immediately initiate a preliminary investigation into the matter in accordance with this policy, and document it in a Police Memo.
- b. Upon initiation of the preliminary investigation, the initiating supervisor shall notify their shift commander and the Captain of Administration.
- c. Supervisory personnel shall complete a thorough investigation of all minor misconduct and procedural complaints and complete the *Internal Investigation Report* (IAIR Form #3). Serious misconduct complaints shall be forwarded to the Captain of Administration.
- d. All serious misconduct and/or criminal allegations will be under the jurisdiction of the Captain of Administration and will be directed by him/her.
- e. Supervisors shall maintain the confidentiality and security of internal affairs investigations and records.
- f. Upon completion of an investigation, the investigating supervisor shall make a disciplinary recommendation to the Chief of Police regarding the final disposition, as part of the *Internal Investigation Report* (IAIR Form #3). The recommendation shall take into consideration the employee's record of service. The entire internal investigation file will be forwarded to the Captain of Administration for filing.

###### 4. Captain of Administration

- a. The Captain of Administration shall record, register, and control the investigation of all complaints against department personnel.

IV. PROCEDURES - *Continued*

- b. The Captain of Administration shall conduct investigations of alleged or suspected serious or criminal misconduct within the department or assign the investigation to another supervisor. If assigned to another supervisor, the Captain of Administration shall supervise and control the investigation, with the investigating supervisor meeting with the Captain of Administration weekly.
- c. The Captain of Administration shall maintain the confidentiality and security of internal investigations and internal affairs records. These records shall be kept separate from other department records, and access to them will be strictly limited to the Captain of Administration, Captain of Operations and the Chief of Police.
- d. The Captain of Administration shall apprise the Police Chief of the existence, progress and final outcome of each internal investigation.
- e. Upon completion of an investigation, the Captain of Administration shall review the investigation and make a recommendation to the Chief of Police regarding final disposition of the matter.

## 5. Chief of Police

- a. The Chief of Police shall review the internal investigation and recommendations for disciplinary action and will take such actions as he/she deems appropriate. The Chief shall:
  - 1) Complete the disciplinary action report per the Disciplinary Action Policy #4-1200, if applicable.
  - 2) Complete and send the complainant a letter with the outcome of the investigation, if applicable.
  - 3) Complete and send the Police and Fire Commission a letter outlining discipline given to an employee, if applicable.
- b. Nothing in this policy diminishes the authority of the Chief of Police to order suspensions, terminate temporary or probationary employees, or to file charges with the Police and Fire Commission irrespective of recommendations made by subordinates.

## C. Citizen Complaint Report

- 1. For each serious misconduct complaint or criminal complaint against the department or its employees, the receiving supervisor shall complete a Police Memo, and forward copies to the shift commander, Captain of Administration, Captain of Operations and Chief of Police.
  - a. All complaints involving the Chief of Police shall be forwarded directly to the president of the Oak Creek Police and Fire Commission and/or the Mayor of the City of Oak Creek.
- 2. Supervisors shall use the *Citizen Complaint Report* (IAIR Forms #1 and #1[a]) and complete a Police Memo to determine further action regarding the complaint.
- 3. The Captain of Administration shall maintain a file of all *Citizen Complaint Reports*. The Captain of Administration shall compile a summary of all complaints filed against the department and its employees on an annual basis.

IV. PROCEDURES - *Continued*

4. The *Preliminary Complaint Investigation Report* shall include the following:
  - a. Name and contact information of the person making the complaint, if known.
  - b. Name of the employee(s) involved, if known, or action/policy/procedure in question.
  - c. Date/time/location of the incident and when the incident is being reported.
  - d. Specific details of the complaint, including any related incident numbers.
  - e. Receiving supervisor's assessment as to the validity of the complaint.
  - f. Supervisor's actions taken, if any, upon receiving the complaint.
  - g. Receiving supervisor's recommendations on subsequent actions.
  - h. Final disposition (only if the complaint is an informal inquiry).

## D. Complaint Investigation

1. All complaints against the department, including those received anonymously, will be courteously received and thoroughly investigated.
2. Upon receipt of a complaint, the receiving supervisor shall initiate the preliminary investigation and complete a Police Memo on the matter. He/she shall also take any action that may be immediately required (i.e., take steps to prevent further misconduct from occurring).
3. During the preliminary investigation, the receiving supervisor shall determine whether the complaint is based on procedure, minor misconduct, or serious misconduct and whether the complaint would best be resolved through an informal inquiry, internal investigation, or criminal investigation.
4. Procedural and minor misconduct complaints will generally be handled through the chain of command. If the shift commander demonstrates a need for having such a matter handled by someone outside the normal chain of command, he/she may request the assistance from the Captain of Administration.
5. These complaints may be addressed through either informal inquiry or internal investigation. The internal investigation option shall be pursued if it appears that the allegations, if sustained, could result in a letter of reprimand or greater discipline.
6. Upon completion of the investigation, the shift commander shall forward a copy of the *Citizen Complaint Report* (IAIR Form #1 and 1[a]) and their Police Memo through the chain of command, containing the final disposition to the Captain of Administration. This report shall be included in the internal affairs files.
7. Serious misconduct complaints shall require notification of the Captain of Administration, through the chain of command, as soon as such notification is practical. Upon reviewing the complaint, the Captain of Administration shall either conduct the internal investigation or assign the investigation to another supervisor. When the investigation is assigned to another supervisor, the Captain of Administration shall supervise the investigation through completion.

IV. PROCEDURES - *Continued*

8. The Captain of Administration shall also consider whether the alleged misconduct should result in a criminal investigation. In the event a criminal investigation is deemed appropriate, the matter of such an investigation shall be deferred to the Captain of Operations.
9. The Captain of Operations shall investigate the matter, assign it to a supervisory member, or with the approval of the Chief of Police, seek the assistance of an outside investigative agency.
10. The Captain of Operations shall insure that communication is maintained with the district attorney's office in investigations involving alleged criminal conduct on the part of an employee.
11. When the employee is notified that he/she is the subject of an internal investigation, he/she shall be provided a written statement of the allegations and his/her rights and responsibilities relative to the investigation as soon as is practical without interfering with the investigation. The *Garrity Rights* form (IAIR Form #2) shall be used to outline this information and serve as notice to the employee, WI §164.02.
12. Regardless of who conducts the investigation, prior to interviewing the employee(s) identified in the complaint, consideration shall be given to the likelihood that criminal charges or department disciplinary action are possible outcomes of the investigation. This will enable the investigator to ensure that the involved employee is extended all rights afforded by the situation, WI §164.
13. Absent exceptional circumstances, such as the investigation of ongoing acts of misconduct, internal investigations shall be completed within 30 days of the receipt of the complaint. While the investigation is continuing, status updates shall be submitted to the Chief of Police, through the chain of command, every seven days. The final outcome of every internal investigation shall be reported to the Captain of Administration for inclusion in the internal affairs file and entry into the Phoenix Professional Standards program.
14. Upon conclusion of the investigation, the Chief of Police shall insure the complainant is advised in writing of the final outcome of the internal investigation. For lengthy investigations, an effort shall be made to communicate the status of the investigation to the complainant on a periodic basis.
15. If, at any time, the investigator determines the investigation is likely to result in criminal charges against the employee under investigation, the investigator shall notify the Captain of Administration and Police Chief at once. The Police Chief shall immediately order a separate criminal investigation of the matter by the Captain of Operations. Internal affairs investigators may have access to criminal investigations reports and findings. The inverse, however, is not true—criminal investigators may not have access to internal affairs files.

## E. Rights of Employees Under Investigation – WI §164

1. When an employee is notified that he/she has become the subject of an internal investigation, the employee shall be provided a written statement of his/her rights and responsibilities related to the investigation by the *Garrity Rights* form (IAIR Form #2).
2. The rights of an employee under investigation shall be determined by the nature of the investigation. Rights associated with an administrative investigation shall differ from those associated with a criminal investigation. In a situation where the investigation may result in criminal charges against the employee under investigation, the employee shall be afforded rights consistent with a criminal investigation.

IV. PROCEDURES - *Continued*

3. During an internal investigation for strictly administrative purposes, an employee may be compelled to answer questions directly related to his/her duties. Answers received in such a manner may not be used in a criminal proceeding involving the employee. Prior to any questioning, the employee shall be read the standardized administrative investigative rights or “*Garrity Rights*” (IAIR Form #2).
4. The following guidelines apply to an interview during an investigation for strictly administrative purposes.
  - a. The purpose of the investigation is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
  - b. All questions asked of the employee under investigation that are specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
  - c. The interview will be recorded and retained as part of the internal investigation file. The recording will solely be conducted by the Oak Creek PD investigating supervisor and serve as the official recording of the interview. Should the need arise to have the recording transcribed, the recording will be given to the Executive Administrative Assistant, or the Chief’s designee, to be typed.
  - d. No Miranda rights are required.
  - e. As determined by Garrity v. New Jersey, 385 U.S. 483, 87 S.Ct. 616 (1967), the employee has no Sixth Amendment right to counsel as the interview is not a criminal prosecution. At the request of the employee under investigation, they may be represented by a representative of their choice who, at the discretion of the employee, may be present at all times during the interview (WI §164.02)
5. During a criminal investigation involving an employee, the investigator shall perform the following prior to any interview with the accused employee.
  - a. Advise the employee of Miranda rights.
  - b. Advise the employee that if he/she asserts his/her rights not to answer questions, no adverse administrative action will be taken based upon the refusal. Gardner v. Broderick, 392 U.S. 273, 88 S.Ct. 1913, 1916 (1968), indicates that a public employee may not be fired for asserting his/her Fifth Amendment right not to incriminate himself/herself.
    - 1) If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.
    - 2) The Miranda admonition includes the provision that a lawyer may be present at an interview. At the request of the employee under investigation, they may be represented by a representative of their choice who, at the discretion of the employee, may be present at all times during the interview (WI §164.02)

IV. PROCEDURES - *Continued*

F. Status of Employee under Investigation

1. Release from duty:

- a. If the condition of an employee is such that a supervisor deems that he/she should not be performing police duties, the supervisor shall place the employee on administrative suspension with pay and provide the employee with instructions for reporting to the department.
- b. The supervisor shall notify the shift commander, Captain of Operations, Captain of Administration and Chief of Police as soon as practical of any release from duty.

V. DISCLAIMER

The *Citizen Complaint/Internal Affairs Policy* developed by the Oak Creek Police Department is for internal use only, and does not enlarge an officer’s civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of the *Citizen Complaint/Internal Affairs Policy* can only be the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

REFERENCE:

- Disciplinary Action Policy #4-1200
- WI §66.312(3) - Law Enforcement Agency Policies on Use of Force and Citizen Complaint Procedures
- WI §164 – Law Enforcement Officer’s Bill of Rights
- WI §946.66 – False Complaints of Police Misconduct



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Chief of Police

DRS/smv

(Attachments)

- *Addendum—Chronological Checklist for Internal Affairs Investigations*
- *Citizen Complaint Report and Statement Form - IAIR Form #1 and #1(a)*
- *Garrity Rights - IAIR Form #2*
- *Internal Investigation Report - IAIR Form #3*



**CHRONOLOGICAL CHECKLIST**  
**FOR INTERNAL AFFAIRS INVESTIGATIONS**

1. Document the allegation using:
  - A. Citizen Complaint Report (IAIR Form #1 and 1(a))
  - B. Complete a Police Memo with initial complaint information
2. Consider the accused employee's status (i.e., leave with pay, limited duties, etc.)
3. Conduct a complete investigation and document in the Internal Investigation Report (IAIR Form #3).
  - A. Investigate through all sources other than the accused.
  - B. Notify the accused they are the subject of an internal investigation, provide them with a written notice of the allegations, their rights, responsibilities related to the investigation, right to council and notification of the interview in regards to the investigation using the Garrity Rights form (IAIR Form #2). All parties sign the form and provide them with a copy. (Weingarten rights and WI §164)
  - C. Compelled questioning of the accused – read Garrity warning again using the Garrity Rights form (IAIR Form #2). All parties sign the form and provide them with a copy.
  - D. Re-investigate where/if needed, complete the investigation and Internal Investigation Report (IAIR Form#3)
  - E. Loudermill meeting (Due Process) - Chief and internal affairs investigator meet with the accused in the Loudermill setting to get input from the accused before a discipline decision is made.
4. Conclusion of the Internal Affairs Investigation, including the recommendation for discipline.
5. Disciplinary Action Report Form (DAR Form #1 or #2)
  - A. The draft is prepared by the supervisor responsible for the internal investigation.
  - B. This report may include a written narrative by the Chief confirming the just cause standard, i.e., addressing the seven points of just cause.
  - C. Carefully consider how all Seven Tests of Just Cause will be proven; use other supervisors as sounding boards.
    - 1) Summarize specific facts (who, what, when, where, why)
    - 2) "I discussed this incident with you on (date) and your response was..."
    - 3) "This conduct violates various departmental rules/policies, including, but not limited to:
    - 4) "You were aware of these rules because..."
    - 5) "Your prior disciplinary records includes:"
    - 6) You didn't identify any other similarly situated employee.
    - 7) Announce penalty (oral warning, written warning, etc.)
    - 8) Future misconduct may result in discipline up to and including discharge.
6. Meet with the accused explain the outcome of the investigation and deliver the Disciplinary Action Report.
7. Place a copy of the Disciplinary Action Report in the employee's personnel file.
8. Turn over completed internal investigation to the Administrative Captain for filing and entry into the Phoenix Professional Standards program.