

**SAN MARCOS POLICE DEPARTMENT  
POLICIES AND PROCEDURES MANUAL**

**Section Title:** Administrative Investigations

**General Order:** 107

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**Issuing Authority:** *Howard E. Williams*

**Howard E. Williams, Chief of Police**

**I. POLICY**

The image of the San Marcos Police Department depends on the personal integrity and discipline of all Departmental employees. The public image of this Department is determined largely by how it responds to allegations of misconduct. The Department must competently and professionally investigate all allegations of misfeasance, malfeasance, or nonfeasance by employees and all complaints bearing on the Department's response to community needs.

**II. PURPOSE**

The purpose of General Order 107 is to establish procedures for filing, investigating, and disposing of internally and externally originated complaints against employees of the San Marcos Police Department. These complaints include all alleged or suspected violations of the Code of Conduct, the City of San Marcos personnel policies as stated in the Employee Handbook, Chapter 143 of the Texas Local Government Code, the Rules of the City of San Marcos Fire Fighters' and Police Officers' Civil Service Commission, the City of San Marcos' Computer Policy, Departmental regulations as stated in the general orders and standard operating procedures, or the laws of the State of Texas or the United States.

**III. DEFINITIONS**

The terms used in General Order 107 are defined as follows, unless otherwise indicated:

- A. "A" File – An employee's Civil Service personnel file that is maintained in the Human Resources Division.
- B. Class I Complaint – An allegation of serious misconduct, including, but not limited to a complaint:
  - 1. Of involvement in criminal conduct, such as bribery, theft, perjury, etc.;
  - 2. That the use or threatened use of force against a person was unreasonable and unnecessary under the circumstances;
  - 3. That the restraint of a person's liberty occurred without probable cause, reasonable suspicion or other legally valid reasons;

4. That the search of a person or property was illegal, improper or unjustified;
  5. That taking, failing to take, or the method of police action was predicated upon factors that were irrelevant, such as race, sex, or age; and/or
  6. Of insubordination, intoxication on duty, sleeping on duty, dereliction of duty, or false statements.
- C. Class II Complaint – An allegation of less serious misconduct, including, but not limited to:
1. A complaint that an employee’s manner, gestures, language or other actions were offensive or inappropriate or gave the appearance of a conflict of interest or misuse of influence; and
  2. A complaint such as tardiness, faulty driving, or failure to comply with established Department or City policies and procedures.
- D. Complaint – An allegation of misconduct by an employee that is alleged to have been unconstitutional, unlawful, or a violation of the rules and regulations.
- E. Exonerated – A finding that the incident occurred, but that the employee acted lawfully and within policy.
- F. “G” File – An employee’s personnel file that is maintained at the Department.
- G. Inquiry – Questions or concerns regarding a policy, procedure or practice of Department personnel that does not constitute an allegation of misconduct.
- H. Insubordination – The willful disobedience of, or deliberate refusal to obey, any lawful and/or proper order of a supervisor.
- I. Letter of Instruction – A written directive to an employee to comply with policy, procedure, or local civil service rules.
- J. Misconduct Not Based on Complaint – Substantiated misconduct that was not alleged in the original complaint, but was disclosed by the investigation.
- K. Rules and Regulations – Provisions of the Code of Conduct, the City of San Marcos personnel policies as stated in the Employee Handbook, Chapter 143 of the Texas Local Government Code, the Rules of the City of San Marcos Fire Fighters’ and Police Officers’ Civil Service Commission, the City of San Marcos’ Computer Policy, and Departmental regulations as stated in the General Orders and Standard Operating Procedures.
- L. Substantiated – A finding that an allegation is supported by sufficient evidence, or that the misconduct did occur.
- M. Suspension – Relief from duty without pay for a violation of the rules and regulations.
- N. Unfounded – A finding that the allegation is false or not factual.
- O. Unsubstantiated – A finding that insufficient evidence exists to prove or disprove an allegation of misconduct.
- P. Verbal Reprimand – A spoken or oral directive by a supervisor pointing out an infraction that is in need of modification or correction of policy, procedure, conduct, or civil service rule.

- Q. Written Reprimand – Documents a violation of policy, procedure, conduct, behavior or civil service rule.

#### **IV. REQUIREMENTS FOR MAKING FORMAL COMPLAINTS**

- A. All complaints, allegations of misconduct, or unresolved criticisms of service initiated from a private citizen, from an employee of the Department, or from an employee of another agency, whether anonymous or non-anonymous, will be accepted and recorded in the Department database.
- B. Persons wishing to make formal complaints must do so by submitting a written statement of the complaint accompanied by their signature. A notarized affidavit is preferred, but is not required.
- C. A signed letter of complaint may be sufficient after verification that it is not fictitious or signed with a fictitious name. This determination will be made by the Chief of Police.
- D. An internally originated complaint may be made by any employee by submitting a written memorandum with signature or by notarized affidavit.
- E. The Chief of Police may serve as the complainant of an externally originated complaint that cannot or will not be made by the original complainant as outlined in paragraph B of this section. This will be done only upon substantial evidence that an infraction has occurred.
- F. Personnel complaints will not be accepted more than ninety days after the alleged incident, except for the following exceptions:
  - 1. When the complaint involves a criminal violation, the criminal statute of limitations will prevail.
  - 2. When the complainant can show good cause for not making the complaint within the specified time limit, the complaint may be accepted. This determination will be made by the Chief of Police.
  - 3. When otherwise authorized by the Chief of Police in the best interest of the Department.
- G. Anonymous complaints will be investigated only at the specific direction of the Chief of Police. If a preliminary investigation identifies a violation, the formal complaint may be signed by the Chief of Police or his designee.
- H. In all cases, a copy of a signed complaint will be given to the officer or employee within a reasonable time after the complaint is filed.
- I. Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.

#### **V. INVESTIGATOR'S RESPONSIBILITIES**

- A. The determination of whether to conduct a formal or informal investigation will be based upon:
  - 1. The nature of the allegation;
  - 2. The complexity of the circumstances or issues involved; and
  - 3. The history of similar complaints against the affected employee.

- B. Investigations of Class I allegations will be formal investigations conducted by a Commander or Assistant Chief outside the affected employee's direct chain of command.
  - 1. The investigator should attempt to get formal statements from the complainant and from all non-employees who are witnesses to the allegation. The investigator will gather any other evidence necessary to prove or disprove the allegation.
  - 2. The investigator will maintain a secured file and will not, until the investigation is complete, share information from the investigation except with his chain of command or other employees assigned to assist with the investigation.
- C. When the investigation is completed, the investigator will write a report detailing the investigation and any recommendations as to the finding of each of the allegations. He will deliver the report and the investigative file to the Chief of Police.
- D. The Chief of Police will forward the file to the supervisor(s) of the affected employee for review and recommendations of findings.
  - 1. Supervisors are not to review any other supervisors' recommendations of findings that have been submitted.
  - 2. Each supervisor will forward his/her independent evaluations and recommendations to the Chief of Police. The recommendations and evaluations will include:
    - a. Whether the investigation was complete and thorough;
    - b. Comments regarding the sufficiency and quality of the report; and
    - c. Recommendations on the findings.
  - 3. All of the recommendations are returned to the Chief of Police, who is responsible for issuing the findings on the allegations.
- E. Investigations of Class II complaints may be handled formally or informally.
  - 1. The affected employee's supervisor normally assumes responsibility for the investigation, but may direct the complaint to an uninvolved supervisor, if necessary.
  - 2. The investigating supervisor may, or may not, take statements and collect evidence as necessary to investigate the allegations.
- F. A supervisor receiving an inquiry will record the date, time, nature of inquiry, complainant's name, address and phone number, the officer's name, if known, and the policy being questioned.
  - 1. Once a supervisor determines there is no misconduct or policy violation, he will explain to the complainant that the officer followed policy and procedure and no further action will be taken.
  - 2. The officer may or may not be made aware of the inquiry.
  - 3. An inquiry will not appear on an officer's complaint history.

## **VI. EMPLOYEE'S RIGHTS AND RESPONSIBILITIES**

- A. Employees will cooperate and assist in administrative investigations of complaints. Failure to cooperate in an administrative investigation is grounds for disciplinary action, up to and including indefinite suspension or termination.
- B. The employee will be informed in writing of the nature of the investigation and the name of the complainant, unless such information would jeopardize the investigation.
- C. Employees are required to answer questions relating to their duties and may be disciplined for refusal to answer such questions. (Refer to *Garrity v. New Jersey*, 385 U.S. 483 and *Gardner v. Broderick*, 392 U.S. 273.)
- D. Any required statements can be used against an employee in a disciplinary action or civil proceeding.
- E. An accused employee may request that his immediate supervisor or other member of his chain of command be permitted to attend an interview regarding an investigation of non-criminal conduct.
  - 1. The supervisor may attend as an observer only and will not take an active part in the interview.
  - 2. An employee's supervisor will not be permitted to attend an interview regarding an investigation of criminal conduct.
- F. The accused employee may be permitted to have legal counsel present during an interview concerning an administrative investigation, but the attorney will not be allowed to object, raise questions, suggest answers to questions, or comment upon the proceedings in any way. The Fifth Amendment right to counsel does not apply to administrative matters. (Refer to *Garrity v. New Jersey*, 385 U.S. 483 and *Gardner v. Broderick*, 392 U.S. 273.)
- G. An accused employee is not entitled to receive the Miranda warning during an administrative investigation.
- H. The investigator conducting the administrative investigation may make reasonable searches of Departmental equipment and facilities for the purpose of identifying and securing evidence that may be utilized as part of an administrative investigation. The search must be approved in advance by the Chief of Police or his designee and the circumstances will be documented by the supervisor in a memorandum to the Chief of Police.
- I. An accused employee may request, by memorandum, to undergo a behavioral cause investigation, blood test, or polygraph examination if he believes such would be beneficial to his defense. The Chief of Police will authorize or deny all such requests.
- J. The Chief of Police may require an accused employee to submit to a behavioral cause investigation or polygraph examination. The results of such examination would be limited to administrative use, except as provided by law.
- K. Polygraph Examinations
  - 1. In some cases, a complainant may undergo a polygraph test to substantiate his allegations made against an employee in an affidavit.

When the test reveals no deception on the part of the complainant, the accused employee may be ordered to submit to a polygraph test.

2. Should the accused employee refuse to take the test after being ordered by the Chief of Police, the accused employee may be subject to disciplinary action up to and including indefinite suspension or termination for refusal to obey a lawful order or for insubordination.
3. Should the investigation originate from an internal allegation, the Chief of Police may order the involved employee(s) to take a polygraph test when such a test is in the best interest of the Department.

L. Medical and Laboratory Examination

1. The Chief of Police or his designee, based on personal observations or the observations of a supervisor, may require an employee while on duty to submit to a test for alcohol or drug use.
  - a. The test will be administered in compliance with the City of San Marcos' drug test policies.
  - b. The results of the test for alcohol or drug use may be used in the disciplinary process.
  - c. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the officer will be relieved of duty as soon as possible by the Chief of Police or other officers in authority.
2. Refusal to submit to the test will be grounds for disciplinary action up to and including indefinite suspension or termination.

M. Photograph and Lineup Identification Procedures

1. Employees may be required to stand in a lineup for viewing by citizens for identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action up to and including indefinite suspension or termination.
2. A photo identification book or database of Department employees may be maintained for the purpose of identification by citizens of an employee accused of misconduct. Photographs of employees for the identification book or database are required by the Department and will be used when narrowly related to the employee's job.
3. Photographs or videotape pictures of employees may be taken, with or without an employee's consent, for the purpose of administrative investigations as related to the employee's job when the employee is suspected of misconduct.

**VII. RELIEF FROM DUTY**

- A. Any supervisor is authorized immediately to relieve from duty, with pay, any employee when, in the supervisor's opinion, it is in the best interest of the Department and/or the community immediately to remove the employee because of the seriousness of the misconduct alleged or observed, and there is not a higher ranking member of the department on duty at the time.

- B. Depending on the nature of the allegation, the supervisor may relieve the employee of any or all department issued equipment or city property.
- C. The supervisor may order the employee not to engage in any law enforcement activity, including extra duty employment.
- D. The employee relieved of duty will remain immediately available by phone contact.
- E. The supervisor, through the Chain of Command, will immediately notify the Chief of Police that an employee has been relieved of duty.

**VIII. DISPOSITIONS**

- A. At the conclusion of an internal investigation, the Chief of Police will issue a finding of fact for each allegation.
- B. The Chief of Police will notify the complainant and the affected employee in writing of the findings. Complainants will be informed only of the finding. Specific disciplinary action will not be revealed. Specifics of disciplinary action are available to the public from the Civil Service Commission.
- C. Findings will be issued as follows.
  - 1. Substantiated – A finding that an allegation is supported by sufficient evidence, or that the misconduct did occur.
  - 2. Unsubstantiated – A finding that insufficient evidence exists to prove or disprove an allegation of misconduct.
  - 3. Exonerated – A finding that the incident occurred, but that the employee acted lawfully and within policy.
  - 4. Unfounded – A finding that the allegation is false or not factual.

**IX. SANCTIONS**

- A. Substantiated misconduct will result in sanctions that are fairly, equitably and appropriately applied. The purpose of disciplinary action is to correct the behavior, deter further misconduct and protect the community and Department from the consequences of misconduct.
- B. Before deciding on a sanction for substantiated allegations of misconduct, the Chief of Police will discuss the incident with the affected employee and the employee’s chain of command. In determining the proper disciplinary sanction, the Chief of Police may consider:
  - 1. The nature of the misconduct;
  - 2. The complexity of the circumstances or issues involved in the misconduct;
  - 3. The history of similar substantiated complaints against the affected employee; and
  - 4. Any aggravating or mitigating circumstances.
- C. A verbal reprimand of an employee by an immediate supervisor may be used to resolve allegations of misconduct that are less serious than those allegations requiring a formal investigation, or to address work performance issues that need to be corrected.

1. The verbal reprimand will take place as soon after the incident as possible.
  2. The verbal reprimand should take place privately while the employee is on duty and should be documented in writing.
- D. A written reprimand may be issued by a supervisor because of an investigation of alleged misconduct, when the supervisor has direct knowledge of the misconduct, or to resolve issues of work performance not constituting misconduct or requiring further investigation.
1. A written reprimand will describe the actions which constituted the misconduct or unacceptable behavior, cite the rules and regulations violated, and set forth any corrective action the employee must take.
  2. All written reprimands and attendant documentation will be forwarded to the Chief of Police.
- E. The Chief of Police may suspend an employee without pay as permitted by Chapter 143 of the Local Government Code, City of San Marcos Personnel Policies, and the Rules of the City of San Marcos Fire Fighters' and Police Officers' Civil Service Commission.
- F. The Chief of Police may indefinitely suspend without pay or terminate an employee as permitted by Chapter 143 of the Local Government Code, City of San Marcos Personnel Policies, and the Rules of the City of San Marcos Fire Fighters' and Police Officers' Civil Service Commission.
- G. The Chief of Police may demote an employee as permitted by Chapter 143 of the Local Government Code, City of San Marcos Personnel Policies, and the Rules of the City of San Marcos Fire Fighters' and Police Officers' Civil Service Commission.

## **X. RECORDS OF INVESTIGATIONS**

- A. Information regarding complaints and inquiries will be maintained in the Department's database.
- B. Database entries will include the complainant's name, address and telephone numbers, the date of the complaint, the name of the employee involved, the nature of the allegation or inquiry and the administrative investigation case number.
- C. The database will be secured to ensure that only employees with a need to access the database have access to it.
- D. The Administrative Commander will compile statistical data and prepare reports as needed.
1. An annual report is submitted to the Chief of Police by January 31 of each year, and will address investigations and commendations of the previous calendar year.
  2. Only statistical summaries are released to employees and to the public.
- E. All administrative investigation files will be maintained according to retention schedules.



- F. Administrative investigations, records and related information are confidential, and will not be discussed or disclosed to any person except as required for official Department business or to comply with Chapter 143 of the Local Government Code.
- G. Upon request, an employee will be provided with the following information from an investigative file:
  - 1. The complaint;
  - 2. The employee's statement;
  - 3. The Chief's findings; and
  - 4. In cases of allegations of racial profiling, a copy of any video recording related to the incident.
- H. Files, records and related case material will be stored and maintained within a secured area.