

	GENERAL ORDER Effective: 02-28-2022	# 03-08
	Section: Management and Supervision	Replaces or Modifies: GO 20 & GO 36
	Title: Internal Affairs Issued by: Chief Deputy Mattie Provost	

Civil Service Statement:

Per Civil Service Rules, the Fort Bend County Sheriff’s Office (FBCSO) has authority to implement policy/procedures through the General Order process concerning internal investigations (Civil Service Rule 6.01). At the time of implementation of said Civil Service Rule, the General Order number referenced was General Order 36. This numbering is being replaced by 03-08; for Civil Service purposes this General Order may be referred as General Order 03-08.

I. Purpose:

To establish FBCSO procedures for receiving and investigating allegations of misconduct concerning employees in order to:

1. Retain public confidence and respect for the Office and its employees by insuring that allegations of misconduct are properly investigated and action taken when appropriate;
2. Ensure that employees are treated fairly in response to an allegation of misconduct; and
3. Comply with requirements of the Law.

II. Policy Statement:

The FBCSO will process allegations of employee misconduct as provided in this General Order and applicable Civil Service Rules.

III. Definitions:

Internal Affairs Investigation – Any investigation of alleged wrongdoing by an employee of the FBCSO and/or any other investigation so classified by the Chief Deputy.

Administrative Investigation - An internal affairs investigation of an allegation that an employee has committed an act of misconduct.

Criminal Investigation - An investigation of an allegation that an employee committed a criminal act.

Supervisory Investigation – An internal affairs investigation that is initiated by supervisory personnel due to discovery of potential wrongdoing either through supervisory observation, coworker complaint, or complaint from another governmental entity/personnel.

Citizen Complaint Investigation – An internal affairs investigation that is initiated due to a citizen’s complaint (is not a coworker or other governmental entity personnel complaint).

Complainant – A person that makes an allegation of misconduct. Further this also means a person who reports or files a formal complaint of unprofessional conduct on the part of an employee of the Fort Bend County Sheriff’s Office. This does not include the Internal Affairs Investigator assigned to the case.

Misconduct – Act(s) or omission(s) by an employee that violate FBCSO policy and/or Law. (Policy is defined by General Order 01-01). This term includes unprofessional conduct as defined in FBCSO Civil Service Rule 6.01.

Approved FBCSO Documentation – Means the currently approved (as amended) traffic citation & warning, criminal warning, field contact, and parking citation & warning form. These are either in handwritten versions or computer entry versions. All traffic stops are to be documented in this manner. Field contacts are documented in this manner and/or in an Incident/Offense report submitted into the Records Management System.

Service Related Complaints – Allegations of misconduct from citizens which are determined to be based upon the citizen’s misunderstandings of the law, established lawful procedures, or appropriate investigative techniques.

IAD – The Internal Affairs Division, which consists of those personnel assigned to this organizational component.

Internal Affairs Investigator – Any employee assigned by authority of the Chief Deputy to conduct an investigation into internal matters of the FBCSO (this includes but is not limited to members of IAD)

IV. Details and Procedures

A. General Timeline Limitations on Investigating Allegations of Misconduct

1. Allegations involving any alleged non-criminal misconduct that occurred more than ninety days before the date the allegation is received by the FBCSO will normally not be investigated. Any records of allegations made that are not investigated will be sent to and kept by IAD in a generic file by year received.
2. Only for purposes of this section on Limitations – an allegation of a criminal act limited to a Class C Misdemeanor not involving assault, intoxication, theft, disorderly conduct, or criminal mischief will be treated as a non-criminal allegation.
3. The Chief Deputy may waive the limitations of this section if it is determined that it is in the best interests of retaining public confidence and respect for the FBCSO and its employees.

B. Process Details

1. Citizen Complaint Investigations
 - a. Shall be referred to Supervisory personnel or IAD who will do an initial review and determine the seriousness of the allegation
 - b. The Chief Deputy will assign duties within Divisional elements based on the

seriousness of the allegation and initial review to determine if enough facts support the potential for an action that constitutes misconduct. These duties will be assigned primarily to Division Commanders (who may delegate when appropriate and with the Chief Deputy's consent) and members of IAD.

- c. In all cases an effort will be made to obtain a written signed complaint from the citizen making said complaint. If the citizen cannot or will not provide this, then the Chief Deputy will determine whether the investigation proceeds or is closed as Not Formalized.
 - 1.) When a written, signed citizen complaint form is received it must be sent to IAD for assignment of a case number. The Chief Deputy will then issue formal assignment for investigation or take other action as appropriate.
2. Supervisory Investigations
 - a. Division Commanders are responsible for keeping the Chief Deputy apprised on any ongoing supervisory investigations into possible misconduct.
 - 1.) Supervisors are responsible for keeping their Division Commander apprised on any ongoing supervisory investigations into possible misconduct.
 - b. The Chief Deputy will determine if the issue is assigned an IAD case number or if it will be handled strictly as a disciplinary investigation utilizing HR maintained personnel files as repository on any findings of misconduct.
 - c. Service related complaints are most appropriately handled by explanation of processes by supervisory personnel. If no records are generated and the issue is resolved with explanation, then no further action is required. If records are created they shall be forwarded to IAD for filing in a similar manner as found in A. 1. above.
3. Additional authority for ordering internal investigations
 - a. The Chief Deputy may order an Internal Investigation into employee/agency related matters at any time and shall have authority to direct all matters concerning internal investigations.
 - b. Regardless of regular assignment, any employee may be authorized to act in the capacity of internal affairs investigator if so ordered by the Chief Deputy
4. Written Complaint Requirements (legal references Texas Government Code [GC] 614.022 & 614.023)
 - a. Prior to any disciplinary action being implemented against an employee a written document describing the alleged misconduct, signed by the person(s) making the allegation(s) shall be delivered to the employee. This document may be referred to generically as the "complaint".
 - b. Further, the "complaint" will be given to the subject employee within a reasonable time frame after the complaint is filed. The Chief Deputy may authorize delaying delivery if the allegations are of a nature that delivery would impede an investigation into the matter or for other appropriate case related reasons.
 - c. Prior to any disciplinary action resulting from a "complaint" it will be investigated to the point of determining that there is evidence to prove the allegation of misconduct [the legal requirement will be "sufficient evidence"]. Sufficient evidence is evidence that is accurate, admissible in court, and sufficient to support a decision or finding.

There is no requirement that evidence supporting a finding of misconduct be “beyond a reasonable doubt”.

5. Investigative Procedures

- a. If an employee is the subject of an investigation and is interviewed the employee will be compensated in accordance with Fort Bend County pay procedures (including applicable overtime if not during regular work hours). If an employee misses regular work hours/duty due to authorized participation in an internal affairs investigation this will not be a consideration when determining whether to impose a punitive action or determining the severity of a disciplinary action. [reference FBCSO Civil Service Rule 6.01 [2])
- b. An employee will not be interviewed and no investigation will be conducted at an employee’s home without the employee’s permission.[reference FBCSO Civil Service Rule 6.01 [3])
- c. Neither the complainant, nor a person who is personally involved in the incident under investigation may conduct the investigation. [reference FBCSO Civil Service Rule 6.01 [4])
- d. Prior to any interview the employee under investigation will be provided with a written statement of the nature of complaint/allegation. This will be provided at least 24 hours before the interview is conducted except in the following situations [reference FBCSO Civil Service Rule 6.01 [5])
 - 1.) During the initial stages of reviewing an incident or complaint where supervisory/investigative personnel conduct preliminary fact finding duties shortly after the time of the incident/complaint or at the scene of an incident. In these cases the investigating personnel shall furnish the employee with an oral statement of nature of complaint/allegation. In these cases within 3 working days a written statement will be provided to the employee if an investigation is pursued.
 - 2.) When the Chief Deputy determines that good cause exists that justifies statement delay. Good cause is defined as denoting adequate or substantial grounds or reason to take a certain action.
- e. During an interview, investigating personnel shall not threaten an employee under investigation with punitive action. However, investigating personnel may inform the employee that his/her failure to truthfully answer questions directly related to the investigation or his/her failure to cooperate fully in the investigation may result in disciplinary action independent of any that may result from the incident under investigation. [reference FBCSO Civil Service Rule 6.01 [6])
- f. Items in this General Order under II.E. 1-5 do not apply to criminal investigations [reference FBCSO Civil Service Rule 6.01 [1.c.]]. The Chief Deputy will determine the nature of an investigation and if he/she determines that there will be a criminal investigation then the legal rules pertaining to such investigations will apply.
 - 1.) An employee under criminal investigation will be advised of his/her legal rights in the same manner as any other criminal suspect.
 - 2.) An employee under criminal investigation will have the right to obtain legal counsel in the same manner as any other criminal suspect.
 - 3.) Employees under criminal investigation have the rights enumerated in the United States Supreme Court decision of Garrity v. New Jersey (1967) and cannot be compelled to incriminate themselves.
- g. Employees who are the subject of an internal affairs investigation are required to truthfully provide all information requested and cooperate fully throughout the

investigative process if the investigation is not criminal in nature (these are termed administrative investigations to distinguish them from criminal investigations). The Chief Deputy makes final determination on the type of investigation to be conducted.

- 1.) An employee who is under criminal investigation and voluntarily waives his/her rights to give information is subject to disciplinary action if he/she knowingly provides false information.
- 2.) In administrative investigations the Chief Deputy may order an employee to submit to being photographed, submit documentation/records, submit to participation in a line-up, submit to medical or laboratory examination, or other specific orders if the order does not violate a law and the Chief Deputy determines the order is specifically related to the investigation. Failure to obey any such order is grounds for separate disciplinary action.

6. Polygraph Examinations

- a. An employee may be ordered to submit to a polygraph examination if it is determined that the requirements for such an order are met under GC 614.063.
- b. The Chief Deputy will determine and make any such order after consultation with the Sheriff.

7. Only forms approved by the Chief Deputy may be used in internal investigations (administrative and criminal).

8. Records

- a. All Internal Affairs records will be kept in accordance with law and follow retention periods established by the Texas State Library and Archives Commission
 - 1.) Local Schedule GR (Records common to all local governments)
 - 2.) Local Schedule PS (Records of public safety agencies)
- b. Records on IAD cases that have been given a case number will be maintained within the IAD.
- c. Records on Internal Investigations that are not assigned an IAD case number will be maintained within Divisional Records when they do not rise to the level of disciplinary action of written reprimand or higher and they are not requested for filing by the Chief Deputy. Those records involving incidents where disciplinary action of written reprimand or higher is implemented will be sent to the Chief Deputy who will route these records to the FBCSO HR section for maintenance within employee personnel files.
- d. Personnel Order actions resulting from an internal affairs investigation will be completed by the Chief Deputy and routed to FBCSO HR and Division Commander for implementation. FBCSO HR will maintain these records within employee personnel files.

C. Investigation Findings

1. The following are the findings that may be reached in internal investigations concerning involved employees. All findings are subject to final approval of the Chief Deputy.
 - a. Not Formalized – The complainant has failed to make written and signed complaint and the Chief Deputy has authorized closure with no further action.
 - b. Unfounded – The acts/omissions the allegation of misconduct was based upon did not occur.
 - c. Exonerated – The acts/omissions the allegation of misconduct was based upon occurred

but were lawful and appropriate.

- d. Not Sustained – There is not enough evidence to support a sustained, exonerated, or unfounded finding.
- e. Sustained – Misconduct occurred.

- 2. In addition the Chief Deputy will review internal investigations to determine if patterns exist that suggest new or revised policies are needed to address issues.
- 3. In cases where there are multiple violations involved/discovered, the Chief Deputy will make final determination on which violations will be used to determine disciplinary action. The Chief Deputy will give due regard to the most serious violations when making disciplinary determination.

D. General Supervisory Oversight Role

- 1. This General Order is intended to deal with issues of complaints received about employee actions/inaction and issues requiring detailed investigative activity. Supervisors are to perform oversight duties and may deal with matters they discover on general performance/non-performance issues or other behaviors contrary to policy – documenting same as appropriate.
- 2. Division Commanders will ensure proper oversight and prior to implementation of any discipline of Written Reprimand or higher will consult with the Chief Deputy to ensure that discipline within all of the FBCSO is consistently applied.
- 3. Prior to implementation of any disciplinary action an employee will be provided written documentation giving the nature of the issues found with his/her performance/non-performance of duties or other behaviors contrary to policy. This documentation may be in memo form or e-mail.
- 4. This Section only applies to issues not assigned an IAD case number and where there is no written citizen complaint. Further, Supervisors shall refer serious acts of misconduct to Division Commanders for appropriate action.

DI. Misconduct Actions/Allegations requiring immediate action

- 1. If a Division Commander or higher authority determines that there is a reason to believe that an employee may have committed a serious act of misconduct or is being accused of serious misconduct that is not on its face unfounded and it is in the best interests of the FBCSO he/she may immediately relieve the employee of active duty. An employee who is an appointed peace officer affected by this action is also immediately relieved of all police authority pending further action.
- 2. Immediate action taken under this section shall be reported to the Chief Deputy who will issue appropriate orders to formalize said action or end action as appropriate.
- 3. Serious act of misconduct in this section means actions where it is felt the employee's continued presence is dangerous to himself/herself or others, constitutes interference with the effective operations of the Office, or in cases where the employee's continued presence hinders the ability to complete an appropriate investigation of an alleged violation of policy.[Reference FBCSO Civil Service Rule 4.05]
- 4. In cases that require immediate action or where a Division Commander or higher authority is not immediately available a supervisor may make an order under this section. As soon as possible, the supervisor will ensure that the action is relayed through the chain of command to the Chief Deputy for issuance of appropriate orders to formalize said action or end action as appropriate.
- 5. Division Commanders are responsible for insuring that any allegation of serious misconduct

is reported to the Chief Deputy as soon as possible.

F. Complainant Communication

1. Complainants will be apprised, when applicable, of
 - a. Investigative process by the employee taking the complaint
 - b. Investigative progress by the assigned lead investigator (or other employee as determined by the Chief Deputy).
 - c. Investigative findings by employee assigned by the Chief Deputy.

G. Only the Sheriff or Chief Deputy may authorize exceptions to this General Order.