



## **3-41 COMPLAINTS INVOLVING DEPARTMENT PERSONNEL**

### **Related SOP(s):**

- 1-61 Internal Affairs Force Division (IAFD)
- 1-62 Internal Affairs Professional Standards Division (IAPS)
- 3-44 Review of Completed Administrative Investigation Cases  
Collective Bargaining Agreement

### **3-41-1 Purpose**

The purpose of this policy is to establish the procedures pertaining to the intake, investigation, and reporting of complaints involving Department personnel. The Internal Affairs (IA) Divisions (IAPS and IAFD) and the Civilian Policy Oversight Agency (CPOA) will act as executive-level investigative bodies that will investigate each complaint. For additional information on Internal Affairs procedures, refer to the IAPS and IAFD Standard Operating Procedures (SOP).

### **3-41-2 Policy**

It is the policy of the Department to ensure all complaints concerning employee misconduct, policies, procedures, and tactics are reported without delay and thoroughly investigated. It is also the policy of the Department to ensure its employees and the community can file a complaint without concern for retaliation.

The primary functions of Internal Affairs and the CPOA are to fairly and impartially investigate all complaints of employee conduct to determine the validity of allegations and to impose any action ranging from policy change recommendations up to and including termination from employment that may be justified in a timely and consistent manner.

### **3-41-3 Definitions**

#### **A. Administrative Investigation**

1. A formal investigation into potential violation(s) of Department policy/procedures or City Rules and Regulations.
2. The formal investigation is conducted by Internal Affairs, CPOA, a designated supervisor, or an external investigator (designated by Chief of Police or the Executive Director of the CPOA).

#### **B. Administrative Investigator ~~or Investigator~~**



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ADMINISTRATIVE ORDERS

**SOP 3-41**

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Any Department employee (IA or Chain of Command), CPOA employee, or contracted external investigator charged with conducting an administrative investigation of either a Civilian Police Complaints (CPC) or internal investigation.

C. Apparent Criminal Misconduct

Apparent criminal misconduct is an act or omission that could violate United States or New Mexico State criminal codes, except minor traffic violations.

D. Minor Traffic Violations

Violations of NMSA Section 66-7-1 et seq. except Driving While Intoxicated (DWI), Reckless Driving, Leaving the Scene of an Accident, and Vehicular Homicide. Parking violations are not apparent criminal misconduct.

E. Complaint

A report of an act or omission allegedly committed by Department personnel that constitutes a violation of Department policies, rules, or procedures, an alleged violation of local, state, or federal law, or an allegation that Department policies, procedures, and/or rules are deficient, defective in implementation or unconstitutional in practice. The two types of complaints are CPCs and internal complaints.

F. CPC(s)

Complaints originating externally from non-Department personnel.

G. CPOA

The CPOA is an independent agency of City Government, not part of either the City Administration or City Council that consists of a Board and an Administrative Office led by the CPOA Executive Director.

The CPOA receives, investigates, and reviews complaints and commendations submitted by community members concerning Department personnel. The CPOA also reviews Department policies, practices, and procedures, in order to provide formal recommendations throughout the policy development process and ultimately to the Chief of Police.

H. Dispositions



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ADMINISTRATIVE ORDERS

**SOP 3-41**

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1. The outcome of a formal investigation. Outcomes will be classified as the following:

- a. Unfounded
  - i. Investigation determines, by clear and convincing evidence, the alleged misconduct did not occur or did not involve the subject employee.
- b. Sustained
  - i. Investigation determines, by a preponderance of the evidence, the alleged misconduct did occur.
- c. Not Sustained
  - i. Investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred.
- d. Exonerated
  - i. Investigation determines, by a preponderance of the evidence, the alleged conduct did occur, but did not violate Department policies, procedures, or training.
- e. Sustained Violation Not Based on Original Complaint
  - i. Investigation determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint but was discovered during the misconduct investigation.
- f. Administratively Closed
  - i. The policy violations are minor (sanction 7, with no pattern/history of misconduct), the allegations are duplicative, or investigation cannot be conducted because of the lack of information in the complaint. Such complaints may be reopened if additional information becomes available.

I. Formal Investigation

A continuation of the preliminary investigation where the preliminary investigation has established the need to conduct a formal investigation in order to resolve the complaint.- A formal investigation begins the administrative timelines outlined in collective bargaining agreements and related Department SOPs.

J. Force Investigations Section (FIS)

FIS is a section within IAFD that investigates the use of force. (See SOP IAFD)



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

**SOP 3-41**

**Draft for OPA**

K. IA

IA consists of two Divisions: IAPS Division and IAFD. The term “Internal Affairs” or “IA” is used when the information relates to one or both Divisions based on which would apply to the situation.

L. IAFD

The administrative investigative body for the Department that reviews all uses of force.

M. IAPS

The administrative investigative body for the Department.

N. Internal Misconduct Complaints

Complaints made by Department personnel alleging misconduct by another employee.

O. Internal Force Complaints

Complaints made by Department personnel or identified during a Use of Force review alleging an out of policy use of force or show of force at any level.

P. “I” or “FI” number

Internal tracking numbers assigned to misconduct or force investigations.

Q. Mediation

The process of resolving a conflict through discussion, negotiation and compromise, without formal investigation or fact-finding. Mediation is appropriate when a complaint does not present misconduct, but instead indicates interpersonal conflict or a civilian’s misunderstanding of Department policy and procedures.

R. Misconduct

A violation of Department policies or procedures; violation of federal, state, or local criminal laws; constitutional violations, whether criminal or civil; violation of personnel rules; or violation of administrative rules or regulations.

S. Preliminary Investigation



1. The initial inquiry into the nature of the complaint.
2. A preliminary investigation shall normally be completed within seven business days of receiving the complaint unless special circumstances have been documented that necessitate a longer window.
3. Since a preliminary investigation is for the purpose of establishing the nature of a complaint and identifying potentially involved personnel, it will not be considered part of investigative timelines outlined in the CBA.

T. The Board of the CPOA

A volunteer citizen board comprised of members selected by the City Council who are tasked with reviewing and making recommendations to the Department on policy; reviewing administrative investigations into officer conduct and making recommendations for discipline, and reviewing serious use of force and other critical incidents to make disciplinary findings.

U. Retaliation

Retaliation includes, but is not limited to, threats, intimidation, coercion, or other adverse action against any person in the workplace or community.

**3-41-4 Procedures**

A. Anti-retaliation

1. Department personnel is required to report misconduct and to encourage members of the public to report misconduct per this policy.
2. Discouraging either Department personnel or members of the public from reporting misconduct is prohibited. Retaliation against personnel who report misconduct or who cooperate with an investigation of misconduct is grounds for discipline, up to and including termination of employment.
3. Department personnel shall not take any intentional adverse action against any individual or group (including both Department personnel and members of the public), in response to that individual or group.

B. Complaints



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

**SOP 3-41**

**Draft for OPA**

1. The Department shall accept complaints regardless of when they are filed.
2. Department personnel will professionally and courteously assist any civilian wishing to file a complaint.
3. Department personnel will report misconduct by any Department employee, including themselves.
4. Department personnel must report misconduct immediately (not to exceed 24 hours) after the incident or learning of the incident.
5. The report does not have to be approved through personnel's chain of command. The lack of approval by the chain of command is not grounds for mitigating the failure to report misconduct immediately (not to exceed 24 hours).
  - a. Administrative interviews conducted by IAPS or IAFD shall not be provided to criminal investigators or for criminal investigations.
  - b. If an employee reveals a criminal action has occurred or believes that providing a written or verbal statement will be self-incriminating, the employee shall affirmatively state this and shall not be compelled to provide a statement without prior consultation between IA and the prosecuting agency and approval by the Chief.
    - i. An independent request for investigation will be sent to the Chief to be forwarded to the appropriate investigative body.
    - ii. Information obtained during the administrative investigation will not be provided to the criminal investigators.
  - c. Advisements by IAPS or IAFD or the CPOA to Department personnel of their Fifth Amendment rights shall only be given where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee.

~~6.~~

~~4.6.~~ As a condition of employment, all employees must truthfully answer questions and cooperate with administrative investigations.

~~2.7.~~ Refusal to answer questions from any administrative investigator is prohibited.

~~3.8.~~ The Department will track allegations regarding misconduct involving individuals who are homeless and/or have behavioral health issues, mental illness or



developmentally delayed, whether or not these conditions are related to a complaint.

- a. The information relating to alleged misconduct is obtained from the CPC form and tracked through database software programs and web applications.

### **3-41-5 Civilian Police Complaints (CPC)**

A. CPOA policy and procedures are not governed by the Department; however, they follow the City Ordinance (Section 9-4-1 et seq.), Albuquerque Police Officers' Association Collective Bargaining Agreement (APOA CBA), Department policy, and City Rules and Regulations.

#### **B. Resources**

1. All Department personnel will familiarize themselves with the resources available to assist civilians with their complaints against the Department and/or its personnel. The resources are:

- a. The CPOA phone number is (505) 924-3770.
- b. The CPOA website is <https://www.cabq.gov/cpoa>.
- c. The CPOA email address is [cpoa@cabq.gov](mailto:cpoa@cabq.gov)
- d. CPC forms and brochures in English and Spanish are located at all Department substations, libraries, IAFD, IAPS, community centers, Department headquarters, APD on-line, and the CPOA office.
- e. All officers in Department vehicles will carry CPC forms in English and Spanish. Officers will provide, or if so equipped, shall print the CPC form for anyone who indicates they are making a complaint or would like to make a complaint regarding Department personnel.
- f. Civilian complaints can be entered into the IA database web application without needing the CPC form.

#### **C. Receipt of Civilian Police Complaints (CPC)**

1. Telephone and In-Person Complaints at a Department Facility

- a. When a member of the public makes a complaint at a Department facility, either in person or telephonically, the Department employee contacted by the individual will notify a supervisor who will assume the complaint intake process and speak with the complainant.





ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

**SOP 3-41**

**Draft for OPA**

- b. If a supervisor is unavailable, the Department employee will advise the civilian of the resources available to initiate an investigation into their complaint and, at the individual's preference, assist them in completing a CPC form with all provided details.
- c. The Department employee will turn the CPC form over to a supervisor before the end of the employee's shift for routing to IAPS.

2. In-Person Complaints in the Field

- a. When a civilian contacts a Department employee in person wishing to file a complaint at a location that is not a Department facility, the Department employee will advise the civilian about the resources available for initiating a complaint. The Department employee will also provide forms if the employee is near the employee's marked Department vehicle, and offer to contact a supervisor to come out and assist the complainant with filing a complaint.
- b. The civilian has the choice of using the resources provided or speaking with a supervisor.
- c. The employee will notify a supervisor of an interest in making a complaint even if the individual elects not to have a supervisor come out.

3. Written Complaints

- a. Complaints received by mail, electronic mail, or facsimile will be promptly forwarded to a supervisor by the employee receiving the communication.
- b. The supervisor will forward the complaint to IAPS.

4. Complaints Related to a Judicial Proceeding

- a. The IAPS Commander, at the direction of the Chief of Police, will annually notify the chief judges from the Second Judicial District Court, the Metropolitan Court, US District Court, the District Attorney's Office, and the Public Defender's Offices of the complaint process.
- b. Complaints received from any of these entities will be handled as a complaint from a civilian, directed to a supervisor for intake and routing to IAPS.
- c. If complaints relating to a judicial proceeding are made by a Department employee or an employee of the City Attorney's office, they will be investigated as internal complaints.

5. Third-Party or Anonymous Complaints





ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

**SOP 3-41**

**Draft for OPA**

- a. A person is allowed to file a complaint on behalf of another individual.
  - b. A person is allowed to file a complaint even when the person had no direct involvement or physical contact in the incident the civilian is complaining about.
  - c. A person is allowed to file a complaint anonymously.
  - d. These types of complaints will be investigated in the same manner as any other complaint.
6. Employees' Responsibilities for Civilian Complaints
- a. Employees shall provide their name and man number when requested by a civilian.
  - b. Employees shall immediately notify a supervisor when a civilian requests a CPC form and/or immediately notify a supervisor when a civilian wishes to make a complaint.
  - c. Employees shall fully cooperate with all civilian complaint investigations to include: truthfully answering all questions, providing requested City-owned items/documents under their control, and reporting for interviews on time.
7. Supervisor Duties for Civilian Complaints
- a. When a civilian requests to make a CPC, employees shall request their immediate supervisor to respond, or if unavailable, shall request another on-duty supervisor.
  - b. Supervisors shall respond to the scene when they are notified that a citizen requests to make a CPC or has requested them.
  - c. Supervisors shall ensure the CPC form is filled out as thoroughly as possible and hand-delivered to IAPS by the end of the next shift in which the misconduct complaint was received.
  - d. Supervisors shall keep custody of all paperwork should the complaint occur during holidays, weekends, or non-business hours, and shall ensure the complaint is delivered to IAPS at the beginning of the first business day.
  - e. If supervisors are notified of a complaint about an allegation of misconduct that just occurred, the supervisors shall take additional investigatory steps by:
    - i. Interviewing the complainant,
    - ii. Gathering any relevant evidence identifying all potential witnesses, and
    - iii. Identifying the employee(s) involved.
  - f. Supervisors may use the CPOA web application in lieu of a CPC form for entering a complaint. The supervisors will still forward all supplemental documentation and evidence to IAPS by the end of the shift following the shift in which the misconduct complaint was received.



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

**SOP 3-41**

**Draft for OPA**

- g. Supervisors shall immediately inform the affected chain of command and IAPS when a supervisor is notified of an allegation of apparent criminal misconduct by a Department employee.

8. IAPS Responsibilities for Civilian Complaints

- a. Ensure all CPCs received are entered into the IA database software and provided to the CPOA no later than three business days from receipt of the complaint.
- b. Confirm that any video related to the complaint is classified for retention.

**3-41-6 Apparent Criminal Misconduct**

A. Civilian Police Complaint-During Intake

1. If IAPS believes a CPC indicates apparent criminal misconduct, IAPS will notify the chain of command, and will still forward the complaint to CPOA.
  - a. IAPS will consult with CPOA regarding the issue.
  - b. CPOA will transfer the case to IAPS if the CPOA investigator concurs that there is an indication of apparent criminal misconduct.

B. Civilian Police Complaint

1. If the CPOA believes a CPC indicates apparent criminal misconduct, the CPOA will transfer the administrative investigation to IAPS.
2. The Commander of IAPS shall immediately notify the Chief.
3. The Chief, or Chief's designee, shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation.

C. Internal Complaint

1. For all cases indicating apparent criminal misconduct, the appropriate IA Division will assume administrative case responsibility and will ensure the proper criminal investigative unit or agency is notified to evaluate the case for a criminal investigation.
2. The investigator shall immediately notify the IAPS Commander



3. The IAPS Commander shall immediately notify the Chief.
4. The Chief shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation.
5. The appropriate IA Division shall not wait until it is notified by the prosecuting agency whether the case will be prosecuted before conducting its administrative investigation. Upon completion of the investigation the case will be forwarded to CPOA for review.

### **3-41-7 Internal Complaints**

#### **A. Reporting**

1. The IAPS Division will be the central intake for all identified or suspected violations of Department SOP.
2. Upon identification of a policy violation(s), or having reasonable cause to believe that a policy violation has or may have occurred, personnel shall immediately initiate an IA Request by using the IA Request template provided within BlueTeam. This request shall not exceed 24 hours, except when the violation is related to a show of force or use of force where policy allows 72 hours for notification.

#### **B. Assignment**

1. All internal Department complaints will be investigated by an IA investigator, a designated supervisor, or a contract investigator, as determined by IA. The CPOA will not investigate internal complaints; however, the CPOA shall audit and monitor all IA investigations.
2. IA will refer complaints involving minor misconduct to the area command for investigation.
  - a. A complaint requiring the interviews of multiple witnesses and employees from various assignments or extensive documentation retrieval will be investigated by IAPS or IAFD.
  - b. If the chain of command disagrees with the assignment, he/she may appeal to the Chief of Police.



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

**SOP 3-41**

**Draft for OPA**

3. Internal complaints against IA or any personnel assigned to these Divisions will be investigated by a designee of the Chief of Police.
  - a. Rules regarding a designated supervisor
    - i. A supervisor will not investigate the complaint if the supervisor:
      - Was involved in the incident (to include force incidents);
      - Was involved in the actions that are the subject of the complaint;
      - Authorized the actions that are the subject of the complaint; or
      - Is a witness to the incident that is the subject of the complaint.
    - ii. If a supervisor has been assigned an investigation and falls under one of these rules, the supervisor will notify the appropriate Internal Affairs Division in order to have the investigation reassigned.

**C. Preliminary Investigation**

1. An investigator will conduct a preliminary investigation.
  - a. The investigator will write a memo to the IAPS Deputy Commander/Lieutenant when the preliminary investigation determines there is no need for a formal investigation. The memo to the Deputy Commander/Lieutenant will detail the facts of the case and why those facts do not warrant a formal investigation. The IAPS Deputy Commander/Lieutenant will make the final decision on whether a formal investigation will or will not proceed.
  - b. The IAPS Deputy Commander/Lieutenant shall determine whether an investigation shall be conducted by IAPS or the field.
  - c. If additional information becomes available, the IAPS Deputy Commander/Lieutenant may reopen a case and order a formal investigation.

**D. Formal Investigation**

1. The investigator shall be familiar with the most current applicable collective bargaining agreement before interviewing employees.
2. If a criminal investigation is being conducted or may be conducted:
  - a. Employees shall not be compelled to provide a statement and will not be provided the Garrity warning until after consultation with the relevant prosecuting agency and approval by the Chief.
  - b. The administrative investigator shall not share files or information with the criminal investigator.



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

**SOP 3-41**

**Draft for OPA**

- c. The administrative investigator may receive information from the criminal investigator, attend briefings by the criminal investigator, and observe interrogations by the criminal investigator only through a monitor system.
3. Investigation Timelines
- a. Internal complaint investigations will be completed in 90-days from the beginning of the formal investigation when an "I" or "FII" number is assigned, not from the date of the incident.
  - b. The 90-day period will not include the preliminary investigation or the review of the investigation by the subject employee(s) chain of command. See SOP – Review of Completed Administrative Investigation Cases.
  - c. The investigation will be considered completed after the respective IA Division Commander approves the completed investigation.
  - d. An extension of the investigation of up to 30-days may be granted, but only if the request for an extension is in writing and is approved by the Chief of Police.
    - i. A longer extension may be granted in extenuating circumstances, such as military deployments, officer hospitalizations, and extended absences, upon agreement by the Chief of Police or his designee and the employee or his/her representative.
  - e. Review and final approval of the investigative findings and imposition of the appropriate discipline will be completed by the target employee(s) chain of command within 30 days of the completion of the investigation.
- E. Completed Internal Complaint Case
1. The completed report will follow the format set forth in the IAPS or IAFD manuals. The report will be maintained in the IAPS/IAFD digital software database. The report shall include, at a minimum:
    - a. Identification of the policies alleged to be violated.
    - b. Identification of the employee(s) alleged to have violated policy.
    - c. Identification of all potential witnesses to the alleged policy violations.
    - d. Identification of all relevant documentation that will be required to prove or disprove the allegation.
    - e. Identification of what further evidence is needed. The investigator will obtain and review additional evidence before conducting interviews.
  2. The investigation narrative shall contain a detailed description of the evidence and why it is pertinent to the case. Interviews will be paraphrased in sufficient depth to



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

**SOP 3-41**

**Draft for OPA**

provide the reader with all the known facts of the case. The narrative should enable the reader to make reasonable determinations and supported conclusions.

3. The investigator will describe determinations made regarding inconsistencies between witness statements and credibility.
4. Pertinent photographs, if any, that accurately represent their content will be included; the location of photographs, if not included, will be disclosed should the need to review them arise.
5. The investigator shall make digital recordings of interviews and the recordings will be included to allow the reviewer to ascertain exact language, tone, and content of the interviews.
6. Any and all other items pertinent to the investigation will be included in the file. When unable to include the items in the file, their location should be documented for retrieval and/or review.
7. The investigator will include in the case file the disciplinary history (retention card) of subject personnel involved in the investigation.
8. The investigator will include in the case file the dispositions to each policy violation alleged (issue of concern), including collateral conduct. The dispositions will include the justification, based on the facts of the case, for the disposition based on a preponderance of the evidence.
9. If a complaint is sustained, the investigator will identify and charge the employee with applicable sections of the SOP that cover the major violation. Lesser SOP violations that are included in the major violation should not be considered when identifying the level of sanction.
10. An investigation with a finding of administratively closed may be reopened if additional evidence becomes available. All relevant deadlines will be restarted if the investigation is reopened.
11. When IAFD requests an Internal Use of Force Investigation, the investigator shall:
  - a. Submit a request for investigation to the IAPS Central Intake;
  - b. Upon approval, fill out the IAFD Misconduct Addendum;
  - c. Send the completed case to IAFD Commander to complete the investigation.





**3-41-8 Search of Personal and Department Property**

- A. Department-issued property and Department facilities are subject to search at any time.
- B. An investigator may reasonably, at any time, ask for and inspect any item that belongs to the Department.
- C. Tangible personal property can be searched when it is brought in for an administrative inspection or when the employee is interviewed on Department or City property. Otherwise, personal property will be searched only with permission of the owner or when a valid search warrant is issued.

**3-41-9 Cooperation with Investigation**

- A. All personnel are required to cooperate with IAPS/IAFD and CPOA investigations, including appearing for an interview when requested by any assigned investigator.
- B. Officers will provide truthful responses to all questions by the assigned investigator in performance of their investigations.
- C. Department personnel shall provide any and all documents and evidence under their control to the investigator upon request.
- D. Investigators will ensure the supervisor of any employee to be interviewed is notified of the pending interview.
- E. The supervisor of the employee will facilitate the employee's appearance for interviews, absent extraordinary and documented circumstances.

**3-41-10 Additional Investigation Considerations**

- A. The use of any deception detection examination or technique will be in accordance with the current CBA/union contract that applies to the employee. Otherwise, such use may be allowed only by order of the Chief of Police, after all other reasonable investigative techniques were exhausted.
- B. Photographs taken by employees as part of a criminal investigation may be used in an administrative investigation, as well as photographs on file with the Department.
- C. Employees will not be directed to participate in a line-up as part of an internal investigation, however, the results of a line-up conducted in a criminal case may be used in an internal investigation.





- D. An employee is not required to disclose information regarding his or her financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

**3-41-11 Maintenance and Analysis of Complaint Information**

- A. IAPS will maintain all complaint and use of force information in the IAPS database software.
- B. This information will be electronically connected to the Performance Evaluation Management System (PEMS).
- C. The CPOA will have access to this information to review civilian complaints, use of force cases, and trend analysis.
- D. The CPOA Director will audit and monitor all IA investigations consistent with City Ordinance.

**3-41-12 Reporting Requirement**

- A. IAPS shall provide a weekly update to the Director of CPOA on all open internal investigations. This report shall contain, but is not limited to the following information:
  - 1. Investigator assigned;
  - 2. Case number;
  - 3. Investigation open date;
  - 4. Employee subject of investigation;
  - 5. Alleged violations;
  - 6. Investigator findings; and
  - 7. Discipline recommendation.