

§ 9-4-1-8 CITIZEN COMPLAINT PROCEDURES.

(A) Any person claiming to be aggrieved by actions of the Police may file a written complaint against the department or any of its officers [no later than 120 days after the date of the action complained of]. The [POCPOB] shall submit rules and regulations governing citizen complaint procedures to the [Mayor and] City Council for approval, including rules and regulations relative to time limits, notice and other measures to insure impartial review of citizens' complaints against members of the police department. [Anonymous complaints may be accepted but must contain sufficient detail such as time, location, date and as much officer information as possible such as badge number, police unit number, or other descriptive facts, including any footage or recordings that may have captured the incident. If the RO determines that a citizen complaint is determined to not merit further investigation, the RO shall notify the complainant by certified mail within fifteen days of the determination.]

(B) [In cooperation with the IRORO, T-t]he Mayor shall designate civilian city staff to receive written citizen complaints at various locations throughout the city. The Police Department may also receive written complaints. [Such complaints shall be filed with the civilian city staff no later than 90 days after the action complained of.] The party who receives the complaint shall [immediately] transmit all citizen complaints for further investigation to the [IRORO]. [If a citizen complaint is determined to not merit further investigation, the complainant shall be notified of that determination by certified mail.]

(C) [RO Proposed Public Record Letter.] After the investigation is completed, the [IRORO and the Chief, or his designee,] shall [consider the investigation and analyze] all [other] relevant and material [circumstances, facts and] evidence [offered by the person investigated gathered under the investigation and formulate findings]. [The IRO and Chief may confer and discuss the investigation and findings.] The [IRORO] shall [then submit prepare and submit] his [or her] findings and [a proposed] public record letter

[with a copy] to the [POCPOB]. The public record letter shall specifically indicate whether the citizen complaint involves a complaint of use of force or is the result of an officer involved shooting. The RO may share any disciplinary recommendations with the Chief of Police in advance of the submission of the public record letter to the POB only as necessary to ensure timeliness pursuant to any applicable union contract or City personnel requirements. Upon receipt of the public record letter and findings, the POB shall schedule a hearing on the proposed public record letter at its next regularly scheduled meeting, provided that there is a period of at least 14 days between the receipt of the public record letter and the next hearing, and shall immediately notify the citizen complainant of the date and time of the hearing.

(D) POB Public Record Letter Hearing for Use of Force or for Officer Involved Shooting Investigations.

(1) The POB shall consider the recommendations of the RO as detailed in the proposed public record letter and shall provide the complainant, if any, with a minimum of ten (10) minutes to be heard. Upon closing of the hearing the POB may, in its discretion:

(a) Accept the proposed public record letter as presented by the RO by a simple majority vote, in which case the public record letter shall be issued as the final determination of the CPOA; or

(b) Conduct a full record review of the investigation file, including review of any *Garrity* material, and take one of the following actions:

(i) If the POB finds that the record within the existing investigation file is sufficient for a final determination on the merits it may adopt a public record letter with its findings and disciplinary recommendation by a simple majority vote, in which case the public record letter shall be issued as the final determination of the CPOA; or

(ii) It may conduct its own investigation. As part of its investigation, it may subpoena documents and witnesses as necessary, and hold any closed hearings as necessary to protect

OPTION 41A – FLOW CHART MODEL w/TIERS w/ADDITIONAL SUGGESTION

confidentiality and as permitted under the New Mexico Open Meetings Act. Upon completion of its investigation the POB may adopt a public record letter with its findings and disciplinary recommendations, in which case the public record letter shall be issued as the final determination of the CPOA.

____(D) POB Public Record Letter Hearing for all Investigations other than Use of Force or Officer Involved Shootings.

(1) The POB shall consider the recommendations of the RO as detailed in the proposed public record letter and shall provide the complainant, if any, with a minimum of ten (10) minutes to be heard. Upon closing of the hearing the POB may, in its discretion:

(a) Accept the proposed public record letter as presented by the RO by a simple majority vote, in which case the public record letter shall be issued as the final determination of the CPOA; or

(b) Conduct a full record review of the investigation file, including review of any *Garrity* material, and take one of the following actions:

(i) If the POB finds that the record within the existing investigation file is sufficient for a final determination on the merits it may adopt a public record letter with its findings and disciplinary recommendation by a simple majority vote, in which case the POB-adopted public record letter shall be issued as the final determination of the CPOA-; or

(ii) If by a vote of seven or a unanimous vote of those in attendance, whichever is lesser, POB finds that the record within the existing investigation file is insufficient for a final determination on the merits of the citizen complaint it shall conduct its own investigation. As part of its investigation, it may subpoena documents and witnesses as necessary, and hold any closed hearings as necessary to protect confidentiality and as permitted under the New Mexico Open Meetings Act. Upon completion of its investigation the POB may adopt a public record letter with its findings and disciplinary recommendations, in which case the public record letter shall be issued as the final determination of the CPOA.

~~(E) If the POB fails to adopt a public record letter, the RO's proposed public record letter shall be issued as the final determination of the CPOA.~~

~~for review and approval. The public record letter to the citizen will only be sent after approval by the POC.~~

~~(D) If the Chief, or his designee, and the IRO disagree on the IRO's findings, the POC will receive the complaint to review at the next regularly scheduled meeting. The POC will treat the complaint as a Non-Concurrence Issue and after conducting a hearing can keep, modify, or change the original findings and/or recommendations of the IRO. If the POC/IRO and Chief do not agree on the findings of any citizen complaint, the Chief Administrative Officer will review the investigation and render a final decision, acting with the same authority and power as described in § 9-4-1-9(B).~~

~~(E) When the Chief, or his designee, and the IRO agree on the findings of the POC, these findings will be considered final and cannot be changed by the Chief, or his designee, or the IRO at any time without first notifying the POC, the IRO, the complainant, and the individual(s) against whom the complaint was filed, by certified mail. Upon such notification the POC will place the matter on its agenda for a regularly scheduled meeting and decide whether the findings should be changed because (1) of newly discovered evidence which by due diligence could not have been known at the time of the original finding, or (2) the original finding was based on fraud, misrepresentation, or other misconduct.~~

~~(F) The findings of the POC/IRO shall be placed with the Chief's findings on the Internal Affairs Unit Disciplinary Status Sheet. The form will be filed in the CPC complaint file and the officer's retention file.~~

~~(G) The Chief shall take whatever action is necessary, including disciplinary action, to complete the disposition of the complaint. Written notice, by certified mail, of such disposition shall be given to the complainant and to the individual against whom the complaint was filed.]~~

§ 9-4-1-9 APPEALS.

OPTION 41A – FLOW CHART MODEL w/TIERS w/ADDITIONAL SUGGESTION

~~(A) [A summary and findings of the investigation conducted pursuant to the direction of the IRO shall be forwarded to the complainant and to the POC. A copy of the IRO's public record letter shall also be forwarded to the complainant and to the POC. Any person who has filed a citizen complaint and who is dissatisfied with the findings of the IRO may appeal that decision to the POC within ten business days of receipt of the public record letter. The POC may upon appeal modify or change the findings and/or recommendations of the IRO and may make further recommendations to the Chief regarding the findings and/or recommendations and any discipline imposed by the Chief or proposed by the Chief.]~~ Within 20 days of receipt of the decision of the [POCPOB], the Chief shall notify the [POCPOB] and the original citizen complainant of his [or her disciplinary] decision in this matter in writing, by certified mail.

~~[(B)]~~ If any person who has filed a citizen complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied with the final [disciplinary] decision of the Chief of Police on any matter relating to his [or her] complaint, he [or she] may request that the Chief Administrative Officer review the complaint, the findings of the [IRO and POCPOB] and the action of the Chief of Police by requesting such review in writing within ten business days of receipt of the Chief's letter pursuant to § 9-4-1-9(A). Upon completion of his review, the Chief Administrative Officer shall take any action necessary, including overriding the decision of the Chief of Police regarding disciplinary action, to complete the disposition of the complaint. The Chief Administrative Officer shall notify in writing, by certified mail, the complainant, the individual against whom the complaint was filed, the Chief of Police and the [IROPOB] of the results of his [or her] review and any action [he has] taken.