



ERIE POLICE DEPARTMENT



Written Directives

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POLICY:

CACP STANDARD 170.1 & 170.10

It is the policy of the Erie Police Department to investigate all allegations of employee misconduct or violation of law. Allegations may be initiated by citizens, government officials or internally by supervisors or any employee. Allegations of an anonymous nature will also be accepted. This directive governs how all allegations of misconduct will be investigated whether the allegations are administrative, criminal or both.

DEFINITIONS:

ADMINISTRATIVE INVESTIGATION: An investigation which covers allegations of misconduct which are violations of policy, directives or procedures which do not rise to the level of a criminal nature. These are generally investigated within the department.

ADVISEMENT OF RIGHTS WAIVER: The traditional Miranda warning in both English and Spanish (Appendix B).

BRADY NOTIFICATION: Information provided to the appropriate District Attorney's office and the P.O.S.T. Board when and employee has been deemed untruthful during an Internal Affairs investigation. (See Appendix F).

COMPLAINT: An allegation of misconduct.

CRIMINAL INVESTIGATION: An investigation which covers allegations of misconduct which may be criminal in nature. These may be internally investigated or referred to another agency as determined by the Chief of Police.

DISPOSITION: Findings, conclusions or the determined outcome of the investigation. Allegations of unsatisfactory performance or misconduct will result in one of the following:

EXONERATED: The investigation indicates the alleged actions of the subject employee were within the directives, procedures, rules, and regulations of the department.

UNFOUNDED: The investigation indicates the subject employee's alleged actions relating to the department directive, procedure, rule or regulation in question, did not occur.

NOT SUSTAINED: There was insufficient evidence to either prove or disprove the allegation.

SUSTAINED: The subject employee's actions were found, by a preponderance of the evidence, to have been in violation of the law, a department directive, procedure, rule or regulation.

FORMAL INVESTIGATION: An investigation in which an internal affairs case number has been issued and a formal disposition will be determined.

GARRITY ADMINISTRATIVE ADVISEMENT: An advisement given to an employee during the course of an administrative Internal Affairs investigation informing the employee of the requirement to provide a statement and/or answer questions concerning allegations of misconduct of a non-criminal nature.

INITIAL INQUIRY: An inquiry to determine the scope and nature of an allegation and to ascertain if further investigation is required. An internal affairs case number will not be issued during the Initial Inquiry unless the matter proceeds to a formal investigation. (See Appendix A)

MISCONDUCT: A violation of a law, directive, procedure, rule or regulation. There are several classifications of misconduct:

GENERAL MISCONDUCT/SERIOUS MISCONDUCT: (including conduct prohibited by law) Potential violations of directives, procedures, rules or regulations which may have an adverse impact on the operation or integrity of the Department and, if proven, would likely result in formal disciplinary action against a named employee. Investigations involving allegations of this type of misconduct may be conducted as Formal Investigations.

MINOR MISCONDUCT: Potential violations of directives or procedures which have minimal adverse impact on the operation or integrity of the department and are not likely to result in a formal disciplinary action against a named employee.

PATTERN MISCONDUCT: A potential pattern of misconduct by an employee which includes, but is not limited to, allegations or complaints over time which indicates conduct of more concern than created by infrequent or isolated incidents of citizen complaints or unacceptable conduct. Investigations involving allegations of this type of misconduct may be conducted as a Formal Investigation.

OBSERVER: An individual not involved in the matter under investigation, identified by the subject employee, to accompany them if requested to a formal investigative interview.

SERVICE COMPLAINT: A citizen complaint pertaining to services or directives of the department which is not an allegation of misconduct against an employee.

PROCEDURES:
CACP STANDARD 170.2

I. INDIVIDUAL EMPLOYEE RESPONSIBILITY

- A. All employees of the Erie Police Department will report allegations of misconduct.

- B. Employees are required to cooperate with Initial Inquiries and Internal Affairs investigations. Employees are required to answer questions by, or render material and relevant statements to a supervisor or an Internal Affairs Investigator. Employees will answer all questions fully and truthfully and will not omit any material facts.
- C. An employee may be required to submit to a medical or laboratory examination, at the agency's expense, when the examination is specifically directed and narrowly related to a particular internal investigation.

CACP STANDARD 170.25

- D. An employee may be photographed, required to participate in a line up, to submit to a fingerprint comparison and/or to submit a financial disclosure statement when such actions are material to a particular internal investigation.

CACP STANDARD 170.8

- E. Every employee of the Department will be furnished a copy of this directive and are responsible for reading and familiarizing themselves with its contents.

II. SUPERVISOR RESPONSIBILITY

- A. Any Command Staff Officer or supervisor, with the approval of a Command Staff Officer, may relieve an employee of duty when the charges are of a serious nature and it appears such action would be in the best interest of the Department or the employee. Officers shall be relieved of their badge(s) and identification card(s) when relieved of duty. Non-sworn employees will be relieved of their department identification cards.
- B. Any person relieved of duty shall be instructed to report in civilian attire to the office of his/her Commander or Deputy Chief at 9:00 a.m. on the next business day, unless circumstances dictate a different course of action.
- C. The supervisor or Command Staff Officer who relieved the employee of duty will report at the same time with applicable reports, along with the officer's badge(s), ID card(s) and other relevant items.

CACP STANDARD 170.25

- D. When there are indications an employee is under the influence of alcohol or drugs while on duty, the employee will immediately be required to report to a supervisor for further evaluation, the results of which will be reported to a Command Staff Officer. The employee may be required to submit to a portable breath test or provide a blood sample for analysis should the evaluating supervisor find reasonable suspicion to believe the employee is in violation of The Erie Police Department's Code of Conduct (See Written Directive 050.000). Failure to submit to a chemical test may be cause for disciplinary action up to and including termination.

Supervisors will accurately document all of their observations and any testing results.

- E. Whenever it becomes necessary to place an Erie Police employee in any detention facility, the ranking supervisor or Command Staff Officer handling the case shall immediately relieve the employee of duty and retain all department property in the employee's possession. Requests to hold or obtain the police uniform will be made to the proper authority in the detention facility.

- F. Supervisors or Command Staff shall initiate an Initial Inquiry when the misconduct observed or alleged is within the scope of their authority.
- G. Supervisors or Command Staff who receive an allegation of misconduct are provided three (3) working days to complete their Initial Inquiry and forward completed correspondence to appropriate personnel.

CACP STANDARD 170.5

- H. Internal investigations should remain confidential and are generally not of public concern nor are they of concern to non-involved members of the Erie Police Department. At no time shall an employee discuss the merits of an internal investigation with anyone else other than those investigating the allegation or with the Chief of Police.

III. PROCESSING ALLEGATIONS

CACP STANDARD 170.6

- A. Allegations by citizens:

Any employee who is contacted by a citizen wishing to lodge an allegation of misconduct complaint against any employee will immediately put the citizen in contact with a supervisor. The supervisor will make contact with the complainant prior to the end of his/her shift and will start an Initial Inquiry. The supervisor must either resolve the complaint or make an appropriate referral.

- B. Allegations by employees:

Employees who wish to make an allegation of misconduct against an employee are authorized to either report directly to a supervisor, a Commander, Deputy Chief or the Chief of Police. Any employee who initiates an allegation against another employee will either prepare a memorandum outlining the allegations or will prepare memorandums and/or reports as directed by their supervisor. The complaining employee will not indicate the existence of or divulge the contents of their allegation to any other agency, employee or individual without proper authorization.

- C. Allegations by Government Officials:

Allegations made by government officials, including but not limited to, law enforcement agencies and prosecutors, will be immediately referred to a Commander, Deputy Chief or Chief of Police. The Command officer will review the allegation and make a determination as to how the case will be handled.

IV. INITIAL INQUIRY – INVESTIGATING SUPERVISOR RESPONSIBILITY

CACP STANDARD 170.3 & 170.4

- A. An investigating supervisor can either be an Erie Sergeant, Commander or Deputy Chief. The investigating supervisor will conduct the Initial Inquiry into the allegation to determine if a formal investigation is needed. A formal investigation is defined as an investigation in which an Internal Affairs case complaint number has been issued. An official disposition must be reached at the conclusion of a formal investigation. A formal investigation may be handled by a Sergeant,

Commander, or Deputy Chief. Any supervisor who receives an allegation(s) against an employee shall:

1. Conduct an Initial Inquiry. If the allegation is initiated outside the department, the supervisor will interview complainants and witnesses to determine the scope and nature of the allegation, identify involved employees and determine if further investigation is necessary. During this Initial Inquiry, supervisors will determine if the allegation is merely a lack of understanding as opposed to alleged misconduct by the involved employee.
2. If the allegation is initiated within the department, a supervisor will conduct an Initial Inquiry to determine the scope and nature of the allegation, identify involved employees, and determine the appropriate level of investigation.

CACP STANDARD 170.6

- B. Potential criminal conduct on the part of an employee will be handled according to established Erie Police Department procedures. Once allegations of law violations have been established, the supervisor will notify a Commander, Deputy Chief, or the Chief of Police immediately.
- C. Allegations which involve violations of directives but have little effect on operations or, create a small degree of risk and/or liability to the employee or the department, may be handled at the first line supervisor level. Supervisors will research the employee's disciplinary and Guardian Tracker history to confirm the alleged violation is not part of a pattern of conduct. If the allegation appears to be an on-going pattern of misconduct, a formal investigation may be warranted. One time allegations of a minor nature may be handled by counseling and a Guardian Tracker notation when this is approved by the employee's Command officer.
- D. Allegations which involve violations of directives which have moderate to high effect on operations or create a moderate or high degree of risk and/or liability to the employee or the department, are generally investigated at the Command level as determined by the Chief of Police. Investigations of this nature are considered formal investigations.
- E. If an allegation involves the Chief of Police, the Deputy Chief will forward a copy of the allegation to the Town Administrator for direction.
- F. Supervisors receiving or initiating an allegation of misconduct will have three (3) working days from the date of notification of the allegation to complete the Initial Inquiry. If the Initial Inquiry indicates a formal investigation is warranted, a Commander or Deputy Chief will be contacted and an IA case number will be obtained.
- G. Allegations of misconduct, which may be resolved without a formal investigation, will be documented in the subject employee(s) Guardian Tracker file. If the allegation of misconduct was simply a misunderstanding by the complainant of a directive and the subject employee(s) handled the situation appropriately, a Guardian Tracker notation is not necessary unless the employee requests the documentation.

V. INITIAL INQUIRY – COMMANDER OR DEPUTY CHIEF RESPONSIBILITY

CACP STANDARD 170.7 & 170.4

- A. A Commander or Deputy Chief will review the Initial Inquiry and make a determination regarding any further assignment of the investigation.

CACP STANDARD 170.11 & 170.23

- B. Once a formal investigation has been initiated, a Commander or Deputy Chief will be responsible for notifying the complaining citizen or employee in writing the complaint has been received and is being investigated by the Erie Police Department. Complainants and the employees under investigation will be notified as to the progress of the investigation and will also be notified about the final disposition of the complaint.

VI. INITIAL INQUIRY PROCEDURES

- A. As previously described, allegations which involve violations of directives which have moderate to high effect on operations or create a moderate or high degree of risk and/or liability to the employee or the department are generally investigated at the Command level as determined by the Chief of Police. Investigations of this nature are considered formal investigations.
- B. All complaints of excessive force or law violations shall be referred to a Commander or Deputy Chief.
- C. When complaints of a less serious nature are received, a statement will be completed immediately by the supervisor, Commander or Deputy Chief who takes the complaint. The statement should outline the complaint and allegations. Should clarification be necessary, questions and answers should supplement the statement.
- D. Should a complaint be taken by telephone, the employee accepting the complaint will write a narrative summary of the allegation which includes the identity of the complainant and how to contact the complainant.

CACP STANDARD 170.11

- E. After review of the chain of command, the investigating supervisor, Commander, or Deputy Chief shall notify the complainant of the disposition of any complaint. The date and time of notification will be recorded in the file.

VII. DISPOSITION/RESOLUTION OF COMPLAINTS

If the complainant indicates they are not satisfied with the resolution of the allegation, the complainant will be informed they may contact the Commander or Deputy Chief of the subject employee and will be given the appropriate telephone number to do so. If the complainant is not satisfied with the resolution of the investigation after discussing the case with the subject employee's Commander or Deputy Chief, the complainant will be directed to contact the Chief of Police.

VIII. NOTICE OF INVESTIGATION**CACP STANDARD 170.9**

- A. A "Notice of Investigation" (NOI) (See Appendix C) shall be provided to employees under the following circumstances:
1. The employee is the subject of an investigation by his/her supervisor or a Command Staff Officer for an allegation of violation of law, directives, rules or regulations.
 2. The employee shall be interviewed by a supervisor in an allegation of misconduct investigation in which the employee is the subject or witness of the investigation.
 3. The employee shall be required to submit financial disclosure statements or produce any documentation, including memorandums, related to an allegation of misconduct investigation.
- B. The NOI will include a synopsis of the incident under investigation outlining the specific nature of the investigation, the employee's status in the investigation and will list the most obvious allegation(s) of misconduct.
- C. Prior to any interview, the employee will review and sign the NOI form. The employee will be provided a copy of the signed and dated form.

IX. EMPLOYEES RIGHTS**CACP STANDARD 171.6**

- A. No police employee shall be disciplined or discriminated against in regard to his/her employment or be threatened with any such treatment, by reason of his/her exercise of their rights listed in this directive.
- B. Police employees shall not be discriminated against or penalized in regard to their employment because of national origin, race, creed, sex, age, religion, sexual orientation, disability or for any reason not related to performance or the ability to perform as professional police employees.

CACP STANDARD 171.2

- C. No employee shall have any comment adverse to his/her interest entered in the Guardian Tracker or personnel file without being notified prior to the entry. The employee may, within 30 days of learning of the adverse comment, file a written response to be attached to the adverse comment.
- D. When possible, a search of a locker or other space for storage which is provided by the Department and assigned to an employee shall take place in the employee's presence or with the employee's knowledge. The Town reserves the right to conduct searches and inspections of any Town-owned property without notice when necessary. This may include offices, computers and e-mail, files, desks, lockers and vehicles. Any employee who refuses to submit to a search may be subject to disciplinary action up to and including termination. It is permissible during routine business hours and when necessary to conduct department business, for a supervisor to enter an employee's locker or storage space to look for particular documents or items needed to accomplish department objectives.

- E. An employee under internal investigation shall be informed of the general nature of the investigation as soon as practical after the complaint has been received. This provision shall not apply to a complaint/investigation which would be jeopardized by such notification.
- F. Employees subject to an internal investigation shall be permitted to read the written complaint summary prior to being required or compelled to make a verbal or written statement concerning the matter under investigation.

CACP STANDARD 170.22

- G. All police employees who are the subject of a formal internal investigation may, at their option, be accompanied to the interview by an immediately available observer of the employee's choice. The observer chosen must be able to attend the interview within a reasonable period of time. No interview shall be conducted unless the requested observer is present. During the interview, however, the observer may only act as a witness to the proceedings. The observer may be excluded if his/her behavior becomes disruptive to the interview.

This section is intended to apply to formal investigations initiated by an employee's supervisor, Commander, Deputy Chief or the Chief of Police. An observer shall not be a witness to an Initial Inquiry or counseling session.

1. Any witness to the alleged offense or violation will not be permitted to act as an observer for an employee under investigation.

2. If an Erie Police Employee is selected and agrees to act as an observer, he/she shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information of a NONCRIMINAL nature received from the employee under investigation. Information regarding criminal acts is not privileged and must be disclosed by a police employee acting as an observer.

CACP STANDARD 170.15

- H. Any employee contacted by the Commander or Deputy Chief with regard to providing a statement or other information shall be advised, prior to the interview, as to who shall be conducting the interview and the employee's status with reference to the matter under investigation. That is, whether or not the employee is being questioned as a witness or as the subject or possible subject of an internal investigation.

- I. An employee who is needed for a subsequent internal investigation interview shall be afforded the opportunity to review all of his/her prior statements, whether written, sound or video recorded, prior to being asked any further questions.

CACP STANDARD 170.14

- J. Internal investigation interview sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary. At a minimum, at the employee's request, there shall be one break lasting five minutes in each hour of interview. The times of all such breaks, as well as the beginning and ending times of the interview, shall be noted in the reports/recordings of the interview.

CACP STANDARD 170.20

- K. Whenever an employee is interviewed pursuant to an internal investigation, the interview documents, including written reports and/or sound or video recordings, shall contain the names of

all persons present during the course of the interview and the date, time, and times of the breaks during the course of the interview shall also be included.

L. Upon request, the employee interviewed shall receive a copy of his/her statements.

M. An employee will be allowed to sound record the interview, provided a Commander, Deputy Chief or supervisor is permitted to make a copy of the recording.

CACP STANDARD 170.16

N. Unless immediate action is required, the internal investigation interview shall be conducted at a reasonable hour and the employee will be compensated for any time spent in the interview at his/her regular pay rate unless overtime is necessary.

CACP STANDARD 170.16

O. All internal investigation interviews shall be conducted in a private setting.

CACP STANDARD 170.24

P. Employees under investigation by the Erie Police Department shall not be compelled to submit to a polygraph. An employee under investigation may, of his/her own volition, request to undergo a polygraph examination. If a polygraph is to be conducted at the employee's request, prior approval by the Chief of Police will be required.

CACP STANDARD 170.21

Q. Prior to an employee being questioned in a formal investigation, the person conducting the interview will make a decision to provide the employee either an Admonishment Pursuant to an Internal Investigation (See Appendix D), or Miranda Advisement. If, during the interview, it is suspected the employee may have been involved in a criminal offense, the interviewer will cease questioning under the Admonishment Pursuant to an Internal Investigation and provide a Miranda Advisement.

CACP STANDARD 170.18

R. No employee being interviewed shall be subjected to offensive language or threatened in any manner, either physically or psychologically. An employee refusing to respond to questions shall be informed that failure to answer questions directly related to the investigation may result in disciplinary action up to and including termination.

CACP STANDARD 170.19

S. The Erie Police Department will not release information regarding the interview of an employee to the public without the approval of the Chief of Police.

T. By appointment with the Town of Erie Human Resources Department, all employees may set up appointments to review the contents of their Personnel file. Employees should periodically review their files to verify the contents.

X. CONDUCTING FORMAL INVESTIGATIONS

A. During the time an investigation is underway, the investigator will confer with a Commander or Deputy Chief in order to make a determination as to the duty status of the subject employee.

1.The employee may be allowed to remain in his/her usual assignment.

2.The employee may be allowed to remain on duty, but in another assignment.

3.If the act being investigated is a crime, the employee may be suspended upon the order of the Chief of Police. A determination will then be made by Command Staff indicating:

- a. If the accused employee is to be placed under arrest based on probable cause;
- b. If an arrest warrant should be obtained; or
- c. If further investigation is necessary prior to taking either action.

B. Any employee who has knowledge of the violation or who participates in the investigation must prepare and submit a memorandum as directed by the investigator before going end of watch on the day of the investigation. Reports should be supplemented by questions and answers if necessary for clarification.

1. The report shall be addressed to the supervisor, Commander or Deputy Chief conducting the investigation.
2. The report must be accurate and complete.
3. The employee's Chain of Command shall be apprised of the employee's status.

C. Prior to any employee making any statement or answering any questions concerning his/her or any other employee's conduct and activities as a part of an internal investigation, the employee will be provided a copy of the Advisement Pursuant to an Internal Investigation and Direct Order form by the supervisor, Commander, Deputy Chief or investigator conducting the investigation. If the employee declines to sign the form, the investigator will note "declined" in the employee's signature space.

1. Although an employee may refuse to sign the Advisement Pursuant to an Internal Investigation and Direct Order form in an administrative investigation, a statement must be given. An employee's refusal to provide a statement may result in disciplinary action up to and including termination.
2. If the investigation is relative to a criminal or potentially criminal matter, a Miranda Advisement shall be provided to the subject officer before questioning. The statement should be supplemented by questions and answers which serve to clarify the matter.

D. Statements shall be taken from witnesses and complainants whenever possible and should be supplemented by questions and answers for purposes of clarification.

XI. COMPLETING THE FORMAL INVESTIGATION

A. The employee in charge of the investigation will forward the original copy of the complaint statement and any related documentation to the Commander or Deputy Chief per Initial Inquiry procedures within three (3) days of initial notification of an allegation.

CACP STANDARD 170.11

- B. All copies of Internal Affairs investigation records will be kept:
1. By the investigator as long as the investigation is in progress; and
 2. By the Deputy Chief in secure storage after the investigation.
 3. At no time will any Internal Affairs investigation records be kept where they could be examined by anyone except the investigator, Commander, Deputy Chief or Chief of Police.
 4. Internal Affairs records will be retained permanently for all current employees. Records for former employees will be retained for a minimum of five (5) years following separation from the department.
- C. Generally, investigators are allowed 30 days to complete a formal investigation. When warranted, an extension may be granted.
- D. When the investigator completes a case investigation, the report will conclude with a determination of one of the following recommendations:
1. **Unfounded** – The complaint was not based on facts, as shown by the investigation, or the alleged violation or action did not occur.
 2. **Exonerated** – The alleged action did occur, but the investigation disclosed that the action was reasonable, lawful, and proper.
 3. **Not Sustained** – Insufficient evidence is available to either prove or disprove the allegation.
 4. **Sustained** – The investigation disclosed sufficient evidence to support the allegation.
- E. Once the formal investigation is completed, the investigator shall forward the results with a recommendation through the chain of command to the Chief of Police. Those in the Chain of Command shall also make a recommendation (Appendix E).
- F. As stated in Written Directive 050.002 Discipline, punitive forms of discipline may be imposed following a recommendation based on the outcome of an internal investigation.
- G. A synopsis letter stating an internal investigation was conducted and the finding(s) will be placed in the investigated employee's Human Resources personnel file. Should an employee resign before a formal investigation of a serious nature is completed, a finding may still be determined.
- H. Any potential investigation of a serious nature involving truthfulness, which could result in a Brady violation, will be synopsisized and provided to the District Attorneys (Boulder County and Weld County) by the Chief of Police.

- I. When a finding has been made regarding an employee who holds a Colorado Peace Officer Standards and Training (P.O.S.T) certification has made an untruthful statement concerning a material fact – or knowingly omitted a material fact – on an official criminal justice record, while testifying under oath, or during an Internal Affairs investigation, or comparable administrative investigation, notification shall be made to the P.O.S.T. Board of such findings after the conclusion of the disciplinary process. Notification to P.O.S.T of an untruthfulness finding will be submitted via a letter stating the grounds and the recommendation.

XII. PUBLIC DISCLOSURE OF INTERNAL AFFAIRS INVESTIGATIVE FILES

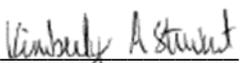
- A. A completed Internal Affairs investigation which examines in-uniform or on-duty conduct of an Erie Police Officer involving alleged misconduct with a member of the public shall be made available for public inspection upon request within the constraints of Colorado Revised Statute; 24-72-303.
 1. Completed Internal Affairs investigations which do not involve any in-uniform or on-duty conduct by an Erie Police Officer and a member of the public shall not be made available for public disclosure.
 2. If criminal charges are pending, an Internal Affairs investigation will generally not be considered complete until the final disposition of the criminal prosecution.
- B. Public disclosure of a completed Internal Affairs investigative file under a public records request shall be forwarded to the Deputy Chief or Commander upon receipt. Prior to release, the Records Section is responsible for applying statutorily required redactions under the direction of the Deputy Chief or Commander. The Chief of Police shall be notified prior to any release.
- C. Section XII of this directive only applies to internal affairs investigations which commence on or after April 12, 2019.

RULES:

NONE

REFERENCES:

Erie Police Department policy Chapter 5
Lamar Police Department Policy section 700
Denver Police Department Operations Manual Section 503, 2014.



Kimberly A. Stewart
Chief of Police