

South Carolina Department of Public Safety

Office of the Director

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POLICY	100.07
EFFECTIVE DATE	MAY 17, 1994
ISSUE DATE	MAY 31, 2012
SUBJECT	OFFICE OF PROFESSIONAL RESPONSIBILITY
APPLICABLE STATUTES	
APPLICABLE STANDARDS	<u>11.4.5, 52.1.1, 52.1.2, 52.1.3, 52.2.1, 52.2.5, 82.2.4</u>
DISTRUBTION	TO ALL EMPLOYEES

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I. PURPOSE

The public has a right to expect that the employees of the Department of Public Safety follow the policies and procedures of the department, obey all state or federal laws, and adhere to other recognized standard of conduct. In this way all department employees assist in the promotion of the image, public confidence, dependability and integrity of the department. All employees are responsible for promoting public confidence in the dependability and integrity of the department through conduct which reflects credit on them and the department; and through conduct which will not bring the employees or the department into disrepute.

II. POLICY

The Office of Professional Responsibility (OPR) is established to uncover, fully develop, and objectively report all facts and circumstances surrounding allegations or complaints of misconduct by department employees whether it involves ethical misconduct, violations of departmental policy and procedure, violations of state or federal law, or other recognized standard of conduct. [52.1.1] [52.2.1 (a) (b)]

III. ORGANIZATION OF THE OFFICE

- A. The Office of Professional Responsibility shall report directly to the Director of the Department of Public Safety. [52.1.3]
- B. The director shall appoint a lead investigator to handle the administrative duties of the office. He will select and hire staff personnel, conduct performance evaluations and otherwise be responsible for the administration of the office. The lead investigator shall create monthly reports to the director on the status of open investigations and maintain all other required reports and documents.

- C. The lead investigator shall select other investigators necessary to carry out the responsibilities of the office. All investigators shall be approved by the director.
- D. The lead investigator shall direct all investigations conducted by the office. He shall review complaints, assign investigators and review findings and conclusions of investigations. He will ensure the objectivity of the investigations and reported findings.
- E. Investigators will investigate allegations of misconduct. Investigators shall plan, with consultation with the lead investigator, the investigative course of action to best develop the matter raised by the allegation or complaint. He shall research issues, review collected data, prepare written findings and present conclusions to the lead investigator and the director. Additional responsibilities include advising employees regarding complaint procedures and attending and presenting evidence at disciplinary hearings.
- F. Vacancies for investigators within the Office of Professional Responsibility shall be open to all qualified individuals. A department employee who transfers to OPR shall be recognized as and referred to only as investigator while assigned to OPR, regardless of the title or rank held by the employee prior to transfer. Investigators will be issued separate and distinct credentials. Individuals who transfer to OPR from within the department will serve an indeterminate term as determined by the director or lead investigator, but nothing in this policy should be construed to prevent an investigator from transferring back to the employee's former assignment. While assigned to OPR, investigators, holding law enforcement certification, shall satisfactorily maintain all in-service training requirements as mandated by the investigator's prior assignment.

IV. INVESTIGATIVE AUTHORITY

Investigators have the authority to: [52.2.5]

- A. Require an employee to respond, orally or in writing, to material and relevant questions related to the performance of their official duties, or to any questions related to the department's recognized standard of conduct. However, the employee will be advised of the options and consequences of their choice not to respond.
- B. Require an employee to produce or grant access to all official records and any other related documents or material.
- C. Require an employee to produce or grant access to all official Government funds and negotiable instruments.
- D. Require an employee to produce or grant access to all Government property including communications and enforcement equipment.
- E. Require an employee to appear at any reasonable location designated by the investigator in connection with an official inquiry.
- F. Direct an employee to keep confidential any investigative-related conversation or information concerning an investigation learned through any contact with an investigator, to the extent that such directive neither prohibits nor infringes upon the employee's right to legal counsel.

- G. Direct an employee to submit to a polygraph test in connection with an official inquiry after consultation with and approval of the lead investigator and the director or his designee.

V. EMPLOYEE RESPONSIBILITIES

- A. All employees shall comply with the provisions of this directive when so directed by an investigator. Failure on the part of an employee to cooperate with an investigator during an official investigative inquiry, or failure to keep confidential any investigative-related conversation or information concerning an investigation, may subject the employee to disciplinary action up to and including termination from employment with the department. [52.2.5]
- B. All employees will promptly report directly to the Office of Professional Responsibility any activity or situation the employee believes to be improper, illegal, or otherwise in violation of any of the department's rules, policies or procedures. The identity of an employee or other individual who furnishes information relating to situations defined herein, may be revealed to the accused employee unless identifying the accuser would, in the opinion of the director, compromise the investigative process or any investigation, or there is reason to believe retaliatory action may be taken against the accuser. Except when essential to administrative or legal proceedings, and to the extent that a substantive investigation of an integrity or security matter is not adversely affected or restricted, the office will hold in confidence those complaints or allegations reported to them. However, the office will provide the accused employee with information concerning the allegations against him, if requested, unless it is determined by the director that providing the information could compromise the investigative process or the investigation. Any employee who gains knowledge of any complaint filed with the office or any investigation being conducted by the office must hold the matter in strict confidence.

VI. INVESTIGATIVE PROCEDURE

A. Initiation

Each allegation or complaint will be investigated by OPR to determine if:

There exists an identified source who reports apparently accurate information or an anonymous source containing sufficient verifiable factual data to warrant an investigation, and alleging or complaining that:

1. An identifiable department employee,
2. Has committed a violation that falls within the investigative responsibility of OPR. [52.1.1] [52.2.1 (b)]

This information will be reported to the director to determine if an investigation will be continued by OPR [11.4.5] or, with the concurrence of the director, because of the minor nature of the matter, the complaint should be referred to the appropriate deputy director or office head for handling. [52.2.1 (a)]

Once a decision to investigate is made, the lead investigator will assign the investigation to an investigator. The investigator will advise the employee's supervisor and the employee that an allegation has been received and an investigation commenced, unless the investigator after consultation with the lead investigator

reasonably believes that notice will interfere with or be detrimental to the investigation. [52.2.5] Investigations will be conducted as expeditiously as possible and will address all allegations against any department employee. Each investigation must be carefully and completely documented. Prior to commencing the investigation, the lead investigator and the assigned investigator shall carefully consider the allegations, possible motives of the source of the information, and the investigative course of action that best develops all facts and circumstances. All investigations must be thoroughly planned to ensure objectivity. Planning should be directed toward exploring every reasonable facet of the allegation, all reasonable explanations, and minimization of unnecessary apprehension and injury to the employee's reputation. Incomplete investigations will not be accepted.

The office's responsibility is to obtain all available facts. Investigators will avoid creating an inference of guilt on the part of the employee during the investigation. The investigator will question witnesses and make such other contacts as may be required in an objective and unbiased manner. When directed to do so by any investigator, employees of the department will keep confidential all communications with investigators assigned to the investigation, to the extent that confidentiality does not inhibit an employee's right to legal counsel.

Where appropriate, an investigation will address supervisory responsibility in relation to the lack of appropriate supervision and its impact upon the circumstances giving rise to the investigation. If deemed appropriate, the office will initiate a separate investigation regarding supervisory responsibility. The original investigation which surfaced supervisory inadequacy will not be unduly delayed pending the investigation of the role of the supervisor.

If an investigation involves an employee who has been suspended pending the outcome of the investigation, the office will attempt to complete the investigation as expeditiously as possible.

B. Interviews

The source of the allegation and other persons having knowledge of the alleged violation will be interviewed and written statements will be obtained when appropriate. Such statements will be taken immediately after the interview. Audio and video recording of interviews may occur only if disclosed to all involved parties.

In every investigation where it is appropriate, the employee who is the subject of the investigation will be interviewed and a signed statement will be obtained. This interview will normally be conducted toward the end of the investigation after all of the facts available to that point are known by the investigator so that generally, only one interview will be necessary. If an employee provides a signed statement as a part of a criminal investigation and that statement is sufficient, an additional administrative interview and signed statement is not necessary.

Interviews with employees will normally be conducted in OPR offices during regular working hours but, may, at the investigator's discretion, be conducted elsewhere or at a time other than during working hours.

The purpose of the employee interview is to allow the employee the opportunity to explain or refute the allegations. Investigators will conduct employee interviews in an objective manner, allowing the employee to present any facts or other information

which might have a bearing on the allegations. During the course of an employee interview, the investigator will:

1. Identify himself and his official position; and
2. Inform the employee of the purpose of the interview by setting forth the allegations against the employee, by articulating the relationship between the allegations and his or her official duties.

When called on in an official inquiry, the investigator must be able to establish the work-related basis for his or her questions. The general rule is that an employee's alleged misconduct must either involve his or her job performance or adversely impact on department operations or image.

C. Interview Warnings

The validity of an administrative action and the admissibility of statements in a criminal proceeding bear directly on the legal sufficiency of warnings given an employee prior to questioning. Therefore, before interviewing any employee, the investigator must carefully consider the nature of the allegations, the possible existence of a criminal violation, and the effects of the interview on any possible subsequent criminal proceeding. Investigators will use the following procedures as a guideline when providing warnings to employees before the commencement of an interview:

1. If there is no indication that an employee to be interviewed is culpable in any criminal or administrative violation and is only considered a witness, it is not necessary to give any warnings to the employee. However, if the employee declines to respond, he or she must be reminded of the obligation as an employee to answer job related questioning and given "Warning to Employee Required to Provide Information" to read and sign.
2. If there is no indication that an employee to be interviewed is culpable in any criminal violation, but there is an indication that he or she may be culpable in an administrative violation, then the employee should be given "Warning to Employee Required to Provide Information" to read and sign.
3. If, at any time before or during the interview of the employee as it relates to an administrative investigation, the employee admits to an undisclosed criminal action, the employee must be given "Warning to Employee Requested to Provide Information on a Voluntary Basis" to read and sign.

Except under the circumstances where an employee is taken into custody, an individual's right to counsel does not attach during the course of an interview and an employee does not have a right to have counsel present during any stage of an interview conducted by the office. However, with the permission of the interviewing investigator, an employee may have a witness present during the interview so long as the witness does not interfere with the questioning or if the witness's presence does not prolong the scheduling of the interview. Employees accused of criminal wrongdoing are given all legal protection and are encouraged to exercise their legal rights, including their choice of representation.

If the employee during the course of the interview furnishes information or describes circumstances not previously known or investigated, the investigator will continue the

investigation toward reasonable development of the information or circumstances. This includes interviewing material witnesses identified by the employee and not previously interviewed during the investigation.

Should an employee voluntarily terminate his employment with the department prior to the completion of the investigation, the office will nonetheless complete the investigation as if the employee were still employed. Every effort shall be made to provide the former employee with an opportunity to provide a statement of his actions.

Whenever information is obtained during an investigation which indicates that an employee of the department may have committed criminal violations, the lead investigator shall advise the director as soon as possible. [11.4.5] If sufficient facts have been developed indicating a probable criminal violation, the matter should be discussed with the appropriate solicitor's office or referred to the appropriate criminal investigative authority.

Upon referral for criminal investigation or prosecution, any further administrative investigation, by the department, will be coordinated with the criminal investigation to ensure that the administrative action does not jeopardize the criminal investigation or prosecution. Should the department determine that disciplinary or other adverse action against the employee is necessary, such action should be coordinated with the prosecuting authority to avoid prejudicing the criminal investigation or prosecution.

D. Reports

1. Final Investigative Reports

Final investigative reports will be prepared by the assigned investigator setting forth the specific allegations and the results of the investigative effort. All investigative reports will present the facts of the inquiry in a concise, objective, and impartial manner. Statements which tend to indicate bias or prejudice will be avoided.

After review for investigative sufficiency, the lead investigator shall forward the final investigative report to the director. [82.2.4] The director may designate either that all or some final reports be forwarded to department legal counsel for review. If the director determines that disciplinary action is not warranted, the report will be returned to the lead investigator. If the director determines that disciplinary action is warranted, the director, with the assistance of the Office of Human Resources, will notify the employee of the proposed action by letter. The Office of Human Resources will forward a copy of the letter to OPR for its files. [82.2.4] The Office of Human Resources will also forward to OPR a copy of the final administrative decision should the disciplinary action be grieved by the employee.

After the completion of all disciplinary actions and appeals, all copies of the final investigative report shall be returned to OPR for retention. [82.2.4] No copies of the final investigative report shall be permanently maintained outside of OPR.

All investigations shall be officially closed by the lead investigator only after review by the director or his designee. A case shall be proper for closing when:

- a. Reasonable facts and investigative leads have been thoroughly explored and reported.

- b. All requisite judicial, disciplinary, and adverse actions have been instituted or concluded.
- c. The employee has been officially informed of the disposition of the investigation.

When allegations or evidence having a substantial bearing on a closed investigation emerge, a new investigation may be conducted. Factual evidence developed during a prior investigation may be used to resolve the open inquiry.

All closed OPR files shall be maintained in a secure fashion under the control of OPR. Limited access to closed files shall be granted to those individuals who demonstrate a bona fide need-to-know as determined by the lead investigator with the concurrence of the director. [52.1.2]

2. Activity Reports

The lead investigator shall report the status of all open, pending investigations to the director on a monthly basis. [82.2.4] These activity reports shall succinctly state the nature of the complaint or allegation directed at the employee and the status of the investigation. The reports should be kept as brief as possible while conveying to the director pertinent information. If the investigation is of an employee who holds a senior rank among the commissioned personnel or if the individual involved is an executive level employee, then the matter is classified as sensitive and the director shall be briefed by the lead investigator on a more frequent basis as dictated by the findings of the investigation.

The lead investigator shall also ensure that on a monthly basis the director is furnished a current listing of all open investigations by employee name. The director shall maintain the security of the list at all times. [82.2.4]

