

# South Carolina Department of Public Safety

Office of the Director

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<b>POLICY</b>	<b>100.07</b>
<b>EFFECTIVE DATE</b>	<b>NOVEMBER 25, 2015</b>
<b>SUBJECT</b>	<b>OFFICE OF PROFESSIONAL RESPONSIBILITY</b>
<b>REPLACES POLICY DATED</b>	<b>MAY 31, 2012</b>
<b>APPLICABLE STATUTES</b>	<b>N/A</b>
<b>APPLICABLE STANDARDS</b>	<b><u>11.4.5, 52.1.1, 52.1.2, 52.1.4, 52.1.3, 52.2.1, 52.2.2, 52.2.5, 82.2.4</u></b>
<b>APPLICABLE STANDARD OPERATING PROCEDURE (SOP)</b>	<b>100.07 SOP</b>
<b>FORMS</b>	<b>N/A</b>
<b>DISTRIBUTION</b>	<b>TO ALL EMPLOYEES</b>

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## **I. PURPOSE**

*To establish guidelines that will ensure all investigations carried out by the Office of Professional Responsibility (OPR) are executed in a uniform and objective manner.*

## **II. POLICY**

OPR *shall be responsible for* uncovering, developing, and objectively reporting all facts and circumstances surrounding allegations or complaints of misconduct by South Carolina Department of Public Safety (SCDPS or agency) employees, whether involving ethical misconduct, violation(s) of departmental policy(ies) and procedures, violations of state or federal law(s), or other recognized standard(s) of conduct. [52.2.1 (b)]

## **III. DEFINITIONS**

N/A

## **IV. ORGANIZATION OF THE OFFICE**

A. OPR shall report directly to the director. [52.1.3]

B. The director shall appoint a *chief* investigator to handle the administrative duties of OPR. *The chief investigator shall be responsible for the following:*

1. selecting and hiring personnel;
2. conducting performance evaluations;
3. creating monthly reports for the director regarding the status of open SCDPS investigations; [52.2.2]
4. maintaining *in a secure area* all other required reports and documents; [52.1.2] and

5. *directing all investigations conducted by OPR, including assigning investigators, reviewing complaints, and reviewing findings of investigations.*

## V. INVESTIGATOR SELECTION

Vacancies for investigators within OPR 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 *previously* held by the employee prior to the 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 *chief* investigator. *This policy does not* prevent an investigator from transferring back to *his/her* 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.

## VI. INVESTIGATIVE AUTHORITY

A. Investigators have the authority to:

1. 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 standards of conduct. The employee will be advised of the options and consequences of his/her choice not to respond.
2. Require an employee to produce or grant access to:
  - a. All official records and any other related documents or material;
  - b. *All official agency funds and negotiable instruments; and*
  - c. *All agency property, including communications and law enforcement equipment.*
3. Require an employee to appear at any reasonable location designated by the investigator in connection with an official inquiry.
4. Direct an employee to keep confidential any investigative-related conversation or information learned through contact with an investigator to the extent that such directive neither prohibits nor infringes upon the employee's right to legal counsel.
5. Direct an employee to submit to a polygraph test in connection with an official inquiry after consultation with and approval of the *chief* investigator and the director or designee.

## VII. EMPLOYEE RESPONSIBILITIES

- A. All employees shall comply with the provisions of this directive when directed by an investigator. An employee who fails to cooperate with an investigator during an official investigative inquiry or fails to keep confidential any investigative-related conversation or information concerning an investigation may be subjected to disciplinary action up to and including termination.
- B. All employees *shall* promptly report directly to OPR 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 *an investigation* may be revealed to the accused employee unless identifying the accuser would compromise the investigative process or there is reason to believe retaliatory action may be taken against the accuser. Except when essential to administrative or legal proceedings, the office will hold in confidence those complaints or

allegations reported to them unless otherwise required by law. However, OPR will provide the accused employee with information concerning the allegations against him or her, upon request, 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 OPR or any investigation being conducted by OPR must hold the matter in strict confidence.

## VIII. INVESTIGATIVE PROCEDURE

- A. Each allegation or complaint *made against an employee or the agency* will be reviewed by OPR and referred to the director to determine if *the matter will be investigated*. [52.1.1][52.2.1(b)] *If the complaint is minor in nature, the complaint may be referred to the appropriate division director to investigate. [52.2.1 (a)]*
- B. *Once a decision to investigate is made, the chief investigator will assign an investigator to the case. OPR will notify, in writing, both the employee and the employee's supervisor that the allegation has been received and the investigation has commenced, unless the chief investigator reasonably believes that notice will interfere with or be detrimental to the investigation. The notification from OPR will also inform the employee of his/her rights and responsibilities relative to the investigation. [52.2.5]*
- C. Investigators *shall* investigate allegations of misconduct. Investigators shall plan, in consultation with the *chief* investigator, the investigative course of action to best develop the matter raised by the allegation or complaint. The *investigator* shall research issues, review collected data, prepare written findings, and present conclusions to the *chief* investigator and the director. *The investigator shall also be responsible for advising employees of the complaint procedures and, if requested by the Office of General Counsel (OGC) or outside counsel, attending and presenting evidence at disciplinary, administrative, or legal hearings.*
- D. *The OPR investigative conclusion is classified in one of four (4) ways:*
  1. *Sustained: Employee's action violated department policy, procedures, or guidelines.*
  2. *Not Sustained: Insufficient evidence exists to either prove or disapprove the allegation.*
  3. *Exonerated: Employee's action occurred as alleged, but was in compliance with department policy, procedures, and guidelines. Employee's action was within the guidelines authorized by law.*
  4. *Unfounded: Alleged misconduct did not occur. [52.2.8]*

## IX. REPORTING

- A. Final Investigative Reports
  1. All final investigative reports *shall* present the facts of the inquiry in a concise, objective, and impartial manner. These reports will be prepared by the assigned investigator *outlining* the specific allegations and the results of the investigation *and will be forwarded to the director through the chief investigator.*
  2. The director may require that some or all final reports be forwarded to the *OGC* for review. If the director determines that disciplinary action is not warranted, the report will be returned to the *chief* investigator. If the director determines that disciplinary action is warranted, the director, with the assistance of the Office of Human Resources (HR), will notify the employee of the action by letter. HR will forward a copy of the letter to OPR for

its files. [82.2.4] HR will also forward to OPR a copy of the final administrative decision in case the disciplinary action is grieved by the employee.

3. 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, *except by OGC and HR as part of their respective files relating to grievances, litigation, and associated proceedings.*
4. All investigations shall be officially closed by the *chief* investigator only after review by the director or his designee to ensure:
  - 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; and
  - c. The employee has been officially informed of the disposition of the investigation.

B. Activity Reports

1. The *chief* investigator shall report the status of all open, pending investigations to the director on a monthly basis. These activity reports shall succinctly state the nature of the complaint or allegation directed at the employee and the status of the investigation. The *chief* investigator shall ensure that the director is furnished a current listing of all employees with open investigations *on a monthly basis.* [82.2.4]

X. **PUBLIC INFORMATION**

- A. *Posters informing the public about OPR are posted in public areas of SCDPS buildings throughout the state. These posters contain a toll free number in which the public can use in registering complaints against an employee of the department. When the public utilizes the toll free number, they are placed in contact with a member of the OPR staff who takes the complaint and explains the investigative process to the complainant. The public can also file a complaint by going to the agency's website at [www.scdps.gov](http://www.scdps.gov). [52.1.4] All SCDPS personnel shall be familiar with these procedures so they can inform the public if asked or have a complaint of their own to register against a departmental employee.*
- B. *On an annual basis, the OPR personnel will compile statistical summaries as a result of investigations conducted. The statistical summaries will be made available to the public and SCDPS employees via the agency's website. [52.1.5]*

