

South Carolina Department of Public Safety



Office of the Director

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STANDARD OPERATING PROCEDURES (SOP):	OFFICE OF PROFESSIONAL RESPONSIBILITY
EFFECTIVE DATE:	MARCH 22, 2016
REPLACES SOP DATED:	NOVEMBER 25, 2015
APPLICABLE STANDARDS	52.1.1, 52.1.2, 11.4.5, 52.2.1, 52.2.2, 52.2.3, 52.2.4, 52.2.5, 52.2.6, 52.1.4
FORMS	DPS-OPR-01, DPS-OPR-02
DISTRIBUTION	TO ALL EMPLOYEES

NOTE: The below procedures apply to investigators assigned specifically to OPR and those who have the authority to conduct investigations.

I. Complaint Procedures

All allegations or complaints received by the Office of Professional Responsibility (OPR) will be evaluated by the chief investigator and reported to the director in order to determine if an investigation will be initiated. [11.4.5] [52.2.2] The chief investigator may, with the concurrence of the director, refer matters of a minor nature to the appropriate division director for proper handling. [52.2.1 (a)]

Generally, an investigation will be initiated if (1) an identified source reports information warranting investigation or (2) an anonymous source reports information that can be verified to warrant an investigation. Complaints against the agency or its employees will be investigated to ensure violations of policies/procedures have not been committed. [52.1.1]

II. Notification to Complainant(s)

The chief investigator will notify the complainant in writing that his/her complaint has been received by OPR. [52.2.4(a)] Once an investigation is initiated, the assigned investigator may contact the complainant in order to clarify a point of inquiry related to the investigation or to schedule an interview with the complainant if necessary. All information obtained by OPR investigators during the investigative process is considered confidential, but upon the OPR file being closed such information may be subject to examination by authorized individuals in accordance with the Freedom of Information Act (FOIA). The employee's rights to privacy and due process must be protected during the investigation. If a complainant requests updates concerning the status of an ongoing investigation, he/she may be referred to the assigned investigator. The chief investigator will confer with the director prior to disseminating any information concerning the investigation. [52.2.4(b)] At the conclusion of the investigation, the chief investigator shall notify the complainant in writing that the investigation has been completed. [52.2.4(c)]

III. Notification to Accused Employee(s)

The employee will be notified in writing when s/he is the subject of an OPR investigation unless such notification could possibly jeopardize the integrity of the investigation. The correspondence will inform the employee of his/her responsibilities pursuant to SCDPS Policy 100.07 (Office of Professional Responsibility). [52.2.5]

IV. Investigative Authority

In accordance with SCDPS Policy 100.07 (Office of Professional Responsibility), any agency employee may be subject to the following during the course of any administrative/internal investigation conducted by agency personnel:

1. Any employee may be required to submit to a drug test in accordance with SCDPS Policy 200.04 (Alcohol and Drug Testing). [52.2.6(a)]
2. A photograph may be taken of an employee and used as an investigatory tool during an investigation. [52.2.6(b)]
3. Financial statements, bank records, telephone records, and any additional records of significance may be obtained by investigators and utilized during the course of any investigation. [52.2.6(d)] If an investigator's request for such documentation is denied by the record holder or voluntary disclosure for the requested documentation is not granted, the chief investigator will confer with the Office of General Counsel (OGC) in order to determine the most appropriate course of action that may be utilized to obtain the requested documentation.
4. Instruments for the detection of deception are authorized for use by investigators during the course of an investigation. Polygraph examinations may be conducted utilizing the DPS polygraph examiner or resources from outside agencies. Investigators **shall** coordinate the request of a polygraph with the chief investigator. All polygraph examinations will be conducted in accordance with SCDPS Policy 200.36 (Polygraph Examinations) and State law. [52.2.6(e)]

V. Investigative and Interview Process

OPR investigators shall avoid creating an inference of guilt on the part of any employee during the investigative process. OPR will report the facts as developed through the investigation directly to the director or designee. When directed to do so by an investigator, employees of the department shall 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.

Investigations will address all allegations against the employee. Prior to commencing the investigation, the chief investigator and the assigned investigator shall carefully consider the following:

1. the allegations;
2. possible motives of the source of the information; and
3. 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 the following:

1. every reasonable facet of the allegation;
2. all reasonable explanations; and
3. minimization of unnecessary employee apprehension or injury to the his/her reputation.

If deemed appropriate, OPR will initiate a separate investigation regarding supervisory responsibility if a lack of appropriate supervision may have affected the circumstances being investigated.

The source of the allegation(s) and other parties having knowledge of the alleged violation(s) will be interviewed and statements will be obtained, as appropriate. 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 statement will be obtained. In most cases, the subject of the investigation will be interviewed at the conclusion of the investigation.

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

Employee interviews allow the employee the opportunity to explain or refute the allegations. Investigators shall 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. The investigator shall be responsible for developing his/her own work-related questions. During the course of an employee interview, the investigator shall do the following:

1. Identify him/herself and his/her 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.

Final investigative reports will be prepared by the assigned investigator setting forth the specific allegation(s) and the methodology used during the course of the inquiry. All investigative reports will present the facts of the inquiry in a concise, objective, and impartial manner. After review for investigative sufficiency, the chief investigator shall forward the final investigative report to the director. The director may require that some or all final reports be forwarded to OGC for review. [82.2.4] If OGC believes the report needs to be revised for any reason, the report will be returned to OPR for revision.

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 Human Resources (HR) Director or designee, shall notify the employee of the action by letter. The HR Director or designee shall forward a copy of the letter to OPR for its files. The HR Director or designee shall also forward to OPR a copy of the final administrative decision in case the disciplinary action is grieved by the employee. 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.

All investigations shall be officially closed by the chief investigator only after review and approval by the director or designee. A case shall be closed when the following occurs:

1. Reasonable facts and investigative leads have been thoroughly explored and reported;
2. All requisite judicial, disciplinary, and adverse actions have been instituted or concluded; and
3. The employee has been officially informed of the disposition of the investigation.

Investigations conducted by OPR should be completed within 180 days of the case assignment and reviewed by the chief investigator unless unforeseen circumstances arise which prohibit the timely completion of any such investigation. If an investigation involves an employee who has been suspended pending the outcome of the investigation, OPR will attempt to complete the investigation as expeditiously as possible. If it is determined that an investigation may possibly exceed the specified 180-day time period, the chief investigator, with the concurrence of the director, may authorize an extension. [52.2.3] Incomplete investigations will not be accepted.

If an investigation is referred to another agency due to criminal allegations, conflict of interest, or other circumstances that prove to be an impediment to conducting a thorough and impartial investigation, the chief investigator, with the concurrence of the director, may suspend the investigative process or hold the investigation in abeyance until further action is warranted. Upon conclusion of the investigative process, all OPR investigations shall be forwarded to the director

and appropriate division director for review. Any investigation referred to another agency will be documented and retained within OPR.

Once the investigation has been completed, a closing form will be used to request that the appropriate division director make the determination regarding any additional course of action.

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 considered in connection with an open inquiry or investigation.

Except under circumstances where an employee is taken into custody, an individual's right to counsel does not attach during the course of an OPR interview and an employee does not have a right to have counsel present during any stage of an interview conducted by OPR. Only with the permission of the interviewing investigator can an employee have legal counsel present during the interview, provided that the legal counsel does not interfere with the questioning and coordinating legal counsel's presence does not prolong the scheduling of the interview. However, employees accused of criminal wrongdoing are given all legal protection(s) required by law and are encouraged to exercise their legal rights, including their choice of representation.

If, during the course of the interview, the employee furnishes information or describes circumstances not previously known or investigated, the investigator will continue the investigation toward reasonable development of such new information or circumstances. This includes interviewing material witnesses identified by the employee and who were not previously interviewed during the investigation.

Should the accused employee voluntarily terminate his/her employment with the department prior to the completion of the investigation, the OPR shall complete the investigation as if the employee were still employed.

When information obtained during an investigation indicates that an employee of the department may have committed one or more criminal violations, the chief investigator shall advise the director as soon as possible. [11.4.5] [52.2.2] 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, the department will coordinate any further administrative investigation with the criminal investigation to ensure that the administrative action does not jeopardize the criminal investigation or prosecution.

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]

VI. Confidentiality of Records

OPR documents and maintains all complaints registered against a departmental employee via internal database. [52.1.2] After the completion of disciplinary actions and appeals, all copies of the final investigative report shall be returned to OPR for safekeeping. No copies of the final investigative report shall be permanently maintained outside of OPR, except by OGC and HR as a part of their respective files relating to grievances, litigation, and associated proceedings.

All closed OPR cases will be securely maintained under the direct control of OPR and in accordance with the retention guidelines established by the department. Limited access to closed cases may be granted to those individuals who demonstrate a bona fide need-to-know as determined by the chief investigator with the concurrence of the director or designee. [52.1.2]

VII. Statistical Reporting

The chief investigator shall report the status of all open, pending investigations to the director on a monthly basis. [82.2.4] [52.2.2] These activity reports shall succinctly state the nature of the complaint or allegation directed at the employee or agency and the status of the investigation. 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 chief investigator on a more frequent basis as dictated by the findings of the investigation.

The chief investigator shall also ensure that on a monthly basis the director is furnished a current listing of all employees with open investigations. This listing shall be maintained securely within OPR for a period of three (3) years. [82.2.4]

VIII. Public Information

Posters informing the public about OPR are posted in public areas of DPS buildings throughout the state. These posters contain a toll free number the public can use to register 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. [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.

On an annual basis, OPR personnel will compile statistical summaries as a result of investigations conducted. The statistical summaries will be made available to the public and DPS employees via the agency's website. [52.1.5]

IX. Critical Incidents Requiring Notification of the Director

Upon being notified of an incident involving a departmental employee that may reflect negatively upon the department, the OPR chief is required to notify the director via phone. [52.2.2] This procedure is not all-inclusive and additional situations may arise which require immediate notification of the director by personnel that are not affiliated with OPR. These exceptions will be evaluated and reported on a case-by-case basis. Situations requiring immediate notification to the director include but are not limited to the following:

1. The arrest of any departmental employee;
2. Any traffic-related incident involving an employee of the department that is reported to OPR by a citizen or anonymous complainant; or
3. Any incident involving the discharge of department issued firearms (except in authorized practice, training, qualification, or the humane killing of animals). Other incidents involving the alleged improper use of force will be investigated by OPR. [11.4.5]

OPR personnel are on-call 24 hours a day and may be requested or required to respond to certain incidents involving a department employee in accordance with SCDPS Policy 100.07 (Office of Professional Responsibility) and this SOP.

By Order of the Director
Date: March 21, 2016

Leroy Smith

Director
S C Department of Public Safety

The Original Signed Copy of this
Standard Operating Procedure is on File
in the Office of Strategic Services,
Accreditation, Policy, and Inspections

