

**HR-01.07.02 ADMINISTRATIVE INVESTIGATION PROCEDURES FOR SWORN
PERSONNEL**

Authorized By:


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Procedure Purpose

This document, pertaining to the Austin-Travis County Emergency Medical Services Department (ATCEMS or EMS), complements Policy 205.a and establishes the required process for the administrative investigation of alleged employee misconduct by the Office of Professional Conduct (OPC) and the employee's chain-of-command. It also outlines the imposition of fair and equitable disciplinary action when misconduct is identified.

Dependencies/Constraints/Limitations

This document does not supersede any rights or privileges afforded civilian employees through City Personnel Policies or sworn employees. In addition, nothing in this document limits or restricts the powers vested in the EMS Chief as the final decision maker in all disciplinary matters.

Exceptions / Exemptions

Investigations conducted by EMS Human Resources of non-sworn employees are governed by City of Austin Personnel Policies.

Procedure

1.0 ADMINISTRATIVE INVESTIGATIONS OVERVIEW

The following is a broad outline of the internal administrative investigation process from start to finish. Each section of this procedure will go into more detail of the process associated with investigating administrative complaints.

- a) Complaint Acceptance – Complaints are accepted as outlined in this procedure and forwarded to the OPC. Once the OPC receives a complaint it will be entered into the electronic records management system (RMS).
- b) Complaint Assessment and Classification – The OPC will give the complaint an initial classification level. This classification shall determine whether the complaint requires investigation and, if so, who shall conduct the investigation.
- c) Complaint Investigation – Complaints that require further investigation may be handled as follows:

1. Allegations of criminal conduct require concurrent investigations by the OPC and the outside agency holding jurisdiction over the incident.
 2. Allegations of administrative policy violations may be investigated by the OPC, EMS-HR, EMS Performance Management, and/or EMS Operations Command. This is not an exhaustive list.
- d) Complaint Disposition – Once the complaint has been investigated by the appropriate investigative party, the involved employee's chain-of-command (Commanders or Supervisors in the employee's direct chain-of-command) shall recommend a disposition for the case. If the case receives a disposition of "sustained" it shall go through the discipline process. For all other dispositions the case shall be closed and filed.
- e) Discipline Process – If the disposition of a complaint is "sustained" then the employee's Chain-of-Command Committee shall recommend to the Chief the level of discipline based on the preponderance of evidence. The EMS Chief is the final decision maker on all levels of discipline.

1.1 DEFINITIONS

Administrative Inquiry – Inquiry into a complaint against the department or an employee who cannot be identified or when the complainant is not willing to cooperate with the investigator but the EMS Chief or his designee determines an inquiry is warranted.

Administrative Investigation – An investigation of alleged misconduct by an ATCEMS employee that could result in disciplinary action. These may be conducted by:

- a) EMS's Office of Professional Conduct (OPC)
- b) EMS Human Resources (EMS-HR) or City Human Resources (City-HR)
- c) EMS Operations Command
- d) EMS Chief of Staff
- e) An Independent Investigator designated by the Chief or his designee and/or the City Manager

Classification – Level of designation for a complaint to determine how it is investigated (e.g. "Class A", "Class B", "Class C").

Complainant – Either a person claiming to be a witness to or a victim of misconduct by a Medic; or the Department designee in the case of an anonymous complaint or administrative referral.

Complaint – Any affidavit, administrative referral, or other document setting forth allegations or facts that may form the basis of future allegations of misconduct against an Medic and which serves as the basis for initiating an investigation.

Criminal Investigation – An investigation of alleged criminal conduct by Medic. These investigations are generally conducted by the outside agency holding jurisdiction over the incident. When there is an allegation of criminal conduct, a concurrent administrative investigation shall also be conducted by the OPC.

Disciplinary Action – A temporary suspension, indefinite suspension, demotion in rank, reprimand, or any combination of those actions. Punitive disciplinary action does not include a written reprimand or other lesser form of corrective action.

Disposition – The final determination of how a complaint is closed (e.g. "Sustained", "Unfounded", or "Administratively Closed").

Employee – A sworn employee of the ATCEMS Department. See definition of Medic.

Evidence – Any statements, reports, records, recordings, documents, computer data, text, graphics, videotape, photographs, or other tangible forms of information including a "complaint".

Medic – An employee of the Department who was appointed in substantial compliance with Chapter 143 or who is entitled to civil service status under Chapter 143.005, excluding the Head of the Department and persons appointed to the position in the classification immediately below that of the Head of the Department.

Investigation – An inquiry into the alleged misconduct by a Medic that could result in disciplinary action.

Investigator – Any agent or employee of the municipality who is assigned to conduct an administrative investigation.

RMS (Records Management System) – The electronic system used to enter and track all complaints received by the OPC.

Statement - Any communication (oral or written) setting forth particulars or facts regarding the alleged misconduct under investigation.

Sworn Personnel/Sworn Employee – See definition of Medic.

Supervisor – References made to a supervisor in this procedure relate to the rank of Commander or above, or any sworn employee acting in that capacity.

2.0 COMPLAINT ACCEPTANCE PROCESS

Complaints may be initiated internally or externally. This process outlines how each type of complaint is properly documented, handled and eventually processed by the OPC.

2.1 AVAILABILITY OF COMPLAINT FORMS

The most current versions of the *OPC Internal Complaint Memorandum (OPC-01)*, *OPC Complaint Affidavit (OPC-02)* and *OPC External Complainant Contact Form (OPC-03)* shall be maintained on the ATCEMS online employee portal. The Chief may change these forms at any time without notice. See Appendix A: Forms.

2.2 INTERNALLY INITIATED COMPLAINTS

The complaint acceptance process does not prevent an employee from directly notifying a supervisor of an issue they feel needs to be addressed. Supervisors who receive information of an internal complaint shall follow the guidelines set forth in the Initial Supervisor Responsibility section of this procedure.

The following is a list of the most common causes for initiation of internal complaints:

- a) Possible misconduct of an employee learned of or observed by any department employee.
- b) A complaint initiated by an employee's Chain-of-Command.
- c) Administrative inquiry at the direction of the EMS Chief or his designee.

All internal complaints must meet the following documentation requirements and be processed accordingly:

- a) Civilian Employees: Complaints filed by an EMS civilian employee will be on an OPC Complaint Affidavit (*Form OPC-02*). Complaint affidavits that are received in the OPC from a civilian employee must be in writing, signed by the person making the complaint, sworn to and notarized.
- b) Sworn Employee: Complaints filed by an EMS sworn employee will be on an OPC Internal Complaint Memorandum (*Form OPC-01*). They may be emailed, faxed or personally delivered to the OPC.

2.3 EXTERNALLY INITIATED COMPLAINTS

The following is a list of the most common avenues for initiation of written and verbal external complaints:

- a) Complaint made directly to any department employee or supervisor, either in person, by mail or via phone.
- b) Complaint made directly to the OPC.

All external complaints must meet the following documentation requirements and be processed accordingly:

- a) Written Complaints:

1. Complaint affidavits received from citizens outside the department must be in writing, signed by the person making the complaint, sworn to and notarized.
 2. Complaint letters received by any member of the department (other than OPC) shall be faxed or personally delivered to OPC. The OPC must be notified of receipt of a complaint letter within 24 hours of its receipt.
- b) Verbal Complaints (in person or via phone):
1. EMS civilian employees receiving an alleged minor nature complaint against a sworn employee should refer the citizen directly to the OPC.
 2. Sworn employees receiving an alleged minor nature complaint against a sworn employee should request a supervisor to respond to the scene. If a supervisor is not available, or if the complainant is not able to wait for a supervisor, the sworn employee will obtain the citizen's contact information and forward it to a supervisor. The supervisor may handle the complaint as outlined in Section 2.5 (Initial Supervisor Responsibility).
 3. **Complaints of a serious nature require the immediate notification of an available supervisor. Serious complaints must be initially reviewed by the rank of Commander or above.**

2.4 ANONYMOUS COMPLAINTS

An employee may be investigated based on an anonymous complaint if the employee receiving the anonymous complaint certifies in writing, under oath, that the complainant was and/or wishes to be anonymous. Anonymous complaints shall be treated as an internal complaint for documentation purposes.

2.5 INITIAL SUPERVISOR RESPONSIBILITY

Unless a complaint is submitted directly to the OPC, the initial responsibility to review an internal or external complaint shall generally rest with the employee's immediate supervisor. A supervisor reviewing a complaint shall adhere to the following guidelines:

Allegations of a Minor Nature:

- a) Supervisors notified of a minor complaint are required to contact the complainant within seven (7) calendar days of the time the complaint was received and attempt to resolve the issue.
- b) After attempting to resolve any minor complaint, supervisors shall ensure that an OPC External Complainant Contact Form (*Form OPC-03*) and/or the OPC RMS has been completed as fully as possible and should indicate whether the complainant was or was not satisfied. Forms will be emailed to EMSOPC@austintexas.gov.
 1. Minor complaints that are marked as "satisfied" on the Complainant

Contact Form shall be entered into the OPC RMS as “information” and marked as closed.

2. Minor complaints that are marked as “not satisfied” on the Complainant Contact Form shall be entered into the OPC RMS and will follow the normal complaint assessment, classification and investigation process as outlined in this procedure. If a complainant is not satisfied, the supervisor will also refer the complainant to the OPC.

Allegations of a Serious or Criminal Nature:

- a) Allegations of a serious or criminal nature shall be initially reviewed and basic facts gathered by a supervisor the rank of Commander or above.
- b) A supervisor receiving a complaint involving allegations of a potentially serious or criminal nature shall ensure the following personnel are notified as soon as possible:
 1. Assistant Chief
 2. Division Chief
 3. Office of Professional Conduct
 4. EMS HR Manager
- c) Serious administrative allegations include:
 1. Severe violations of a policy, rule, or regulation.
 2. Conduct that challenges the integrity, good order, or discipline of the department.

Complaints Investigated by a Supervisor:

Under most circumstances, a supervisor’s role is to review a complaint, gather basic facts, and refer the complaint to the OPC. At times, however, a supervisor may be instructed by the OPC to investigate the complaint if that complaint is of a minor nature. In those circumstances, a supervisor investigating a complaint, with guidance by the OPC, shall adhere to the following:

- a) Supervisors shall ensure the procedural rights of the accused employee are followed pursuant to state and federal law and the Meet and Confer Agreement.
- b) During the preliminary investigation of any complaint, supervisors should make every reasonable effort to obtain names, addresses, and telephone numbers of additional witnesses.

3.0 COMPLAINT CLASSIFICATION AND INVESTIGATIVE ASSIGNMENT PROCESS

When a complaint is received by the OPC it will undergo an initial assessment. Based upon this initial assessment, OPC shall determine whether further investigation is

warranted and designate a classification level for the complaint. The OPC shall enter the complaint into the OPC RMS. All initial classifications are subject to approval by the OPC Commander or designee.

If facts uncovered during an investigation indicate that a more serious offense than originally alleged may have occurred, the case may be reclassified and forwarded to the appropriate investigative party (e.g. Austin Police Department, Office of the Medical Director, outside investigator). Conversely, any case may also be reclassified as a lower classification and reassigned if the facts warrant. All case reclassifications shall be mutually agreed upon between the OPC Commander and the Commander in the employee's chain-of-command. If agreement cannot be reached the final decision shall be made by the EMS Chief of Staff or designee.

3.1 COMPLAINT CLASSIFICATION AND INVESTIGATIVE ASSIGNMENT TABLE

The following table outlines who has investigative responsibility for each classification level.

| CLASSIFICATION | ASSESSMENT | INVESTIGATIVE RESPONSIBILITY |
|------------------------|---|---|
| Administrative Inquiry | An inquiry into an incident or event ordered by the Chief or designee. Inquiries are generally for issues that could destroy public confidence in, and respect for, the department or which is prejudicial to the good order of the department. | Administrative inquiries will be assigned to the appropriate party based on the circumstances surrounding the inquiry. |
| Class A Complaint | Cases in which the potential discipline exceeds a 15-day suspension. Generally, Class A complaints are allegations of a serious nature, which include, but are not limited to: <i>Serious violations of a policy, rule, or regulation.</i> <i>Conduct that challenges the integrity, good order, or discipline of the</i> | Class A complaints are investigated by the OPC. Complaints that involve allegations of criminal conduct are also concurrently investigated by the outside agency holding jurisdiction over the incident per this procedure. |

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| | <i>department.</i> | |
| Class B Complaint | <p>Cases in which the potential discipline is a 15-day suspension or less. Cases that do not result in punitive discipline may lead to either an oral or written reprimand. Generally, Class B complaints are allegations of a less serious nature, which include, but are not limited to:</p> <p><i>Less serious violations of a department policy, rule, or regulation (e.g. profanity, belittling language).</i></p> <p><i>Negligent damage or loss of property.</i></p> | <p>Class B complaints will be reviewed and investigated by the OPC. If circumstances warrant, an OPC investigation may be referred to the involved employee's chain-of-command for completion. These investigations will follow the guidelines set in this procedure.</p> |
| Class C Complaint | <p>Generally, allegations that do not fit into the Class A or Class B category, including but not limited to:</p> <p><i>The complaint does not rise to the level of policy violation, and</i></p> <p><i>The complaint would best be handled through other departmental processes (e.g. grievance, performance improvement plan (PIP), training, counseling).</i></p> <p><i>A preliminary review of the allegation shows it is not true.</i></p> <p><i>No formal complaint has been received by the OPC, however the complainant requests the issue be brought to the attention of a</i></p> | <p>Class C complaints will be reviewed by the OPC Commander and the employee's chain-of-command. If all of the parties agree with the initial Class C classification, the complaint will be "administratively closed". If it is determined that additional investigative follow-up is needed, the complaint may be reclassified and investigated according to its new classification.</p> <p>If the OPC receives an informal complaint from a citizen, it will be forwarded or referred to the appropriate supervisor and chain-of-command for its follow-up and response. This is known as a "Supervisor Referral". Such</p> |

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| | <i>supervisor.</i> | referrals will be entered into RMS for documentation purposes only – they are not for disciplinary purposes. |
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3.2 CONCURRENT INVESTIGATIONS BY THE OPC AND THE PROFESSIONAL PRACTICES & STANDARDS DESIGNATED MEDICAL OFFICER GROUP (DMO)

Confidentiality and integrity of an investigation, whether of an administrative nature or medical nature, are of the utmost importance. It is also understood that OPC investigations are distinct and separate from DMO investigations. In some circumstances, however, an investigation may require the sharing of information between both investigative parties. When such circumstances arise, the department and OPC will exercise all due precautions to ensure the sharing of information does not influence, jeopardize, or harm the integrity of either party’s respective investigation efforts.

- a) In the event an administrative investigation by one investigative party (either the OPC or DMO) requires the sharing of information with the other investigative party, the information exchanged will be limited to the following basic facts:
 - 1. Incident call number, and
 - 2. Short synopsis of the concern identified
- b) This information will be submitted using the *Report of a Clinical Concern Form* (OPC-04), which will be utilized by both the OPC and DMO.

4.0 COMPLAINT INVESTIGATION

After the OPC has received, classified and entered a complaint into the RMS, the complaint will be assigned to the appropriate investigative party based on the classification level. Minor nature complaints that have been satisfactorily handled by a supervisor per Section 2.5 of this procedure will be entered into the database and closed as "information".

4.1 COOPERATING WITH ASSIGNED INVESTIGATORS

- a) Employees will cooperate with any assigned investigator as if they were addressing the Chief. Employees who fail or refuse to cooperate with an assigned investigator will be subject to disciplinary action, up to and including indefinite suspension.
- b) Honesty is of the utmost importance in the EMS profession. Employees are

expected to be truthful at all times in the performance of their duties, and during interviews with investigators as outlined in Policy 200 (Individual Responsibilities).

1. Employees who are found to have given a false official statement may be subject to indefinite suspension.

4.2 WITHDRAWN COMPLAINTS

- a) If the complainant withdraws their complaint or refuses to further cooperate with the administrative investigation, the investigation may be closed as incomplete.
- b) If the nature of the allegations can be sufficiently determined without the assistance of the complainant, the investigation shall proceed and be completed.

5.0 ALLEGATIONS OF CRIMINAL CONDUCT

When employees are accused of potential criminal conduct, a concurrent investigation by the outside agency holding jurisdiction over the incident will be conducted apart from any administrative investigation by the department.

5.1 180 DAY INVESTIGATION TIME FRAME

Generally, in order for a sworn employee to be temporarily suspended, demoted, or indefinitely suspended for allegations based on a criminal nature, an investigation must be completed and discipline imposed within 180 days from **the date the Department discovers the allegation**, provided that the employee is still subject to prosecution under the applicable criminal statute of limitations.

- a) If a prosecutor notifies the OPC Commander that taking disciplinary action will jeopardize the criminal investigation, the Chief or designee shall decide whether to notify the Attorney General of his or her intent to take disciplinary action outside of the 180 day statutory period. Notification to the Attorney General is authorized only when the following criteria have been met:
 1. The Chief or designee, at the time of the filing of the notice with the Attorney General, intends to indefinitely suspend the employee; and
 2. The prosecutor has notified the Chief or designee that a delay in imposing an indefinite suspension is necessary to protect a criminal investigation; and
 3. The Chief or designee consults with the OPC legal advisor concerning the propriety of filing the notice to the Attorney General.

6.0 ADMINISTRATIVE INVESTIGATION GUIDELINES

Generally, in order for a sworn employee to be temporarily suspended, demoted, or indefinitely suspended for allegations of an administrative nature, an investigation by the OPC must be completed and discipline imposed within **180 days from the date the incident occurred**. Investigations handled by the OPC shall adhere to the investigative guidelines set forth in this procedure.

The assigned investigator shall follow the rules established by Civil Service Law (generally, Tex. Local Gov't Code Section 143.312). This includes:

- a) An investigator may interrogate a sworn employee who is the subject of an investigation only during the employee's normally assigned working hours unless:
 1. the seriousness of the investigation, as determined by the Chief or designee, requires interrogation at another time; and
 2. the employee is compensated for the interrogation time on an overtime basis. This does not apply to "exempt" employees as classified by the City.
- b) The Chief may not consider work time missed from regular duties by a sworn employee due to participation in the conduct of an investigation in determining whether to impose a disciplinary action or in determining the severity of a disciplinary action.
- c) An investigator may not interrogate a sworn employee who is the subject of an investigation or conduct any part of the investigation at that person's home without that person's permission.
- d) A person may not be assigned to conduct an investigation if the person is the complainant, the ultimate decision-maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct. A sworn employee who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identities of each investigator participating in an interrogation of the employee.
- e) Not less than 48 hours before an investigator begins the initial interrogation of a sworn employee who is the subject of an investigation, the investigator must inform the employee in writing of the allegations in the complaint. An investigator may not interrogate a sworn employee based on a complaint by a complainant who is not a sworn employee unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. In an investigation under this subsection, an investigator may interrogate an employee about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. An interrogation may be based on a complaint from an anonymous complainant if the departmental

employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was anonymous. This subsection does not apply to an on-the-scene investigation that occurs immediately after an incident being investigated, except that the sworn employee under investigation must be furnished, as soon as practicable, a written statement of the allegations in the complaint.

- f) An interrogation session of a sworn employee who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators shall allow reasonable interruptions to permit the employee to attend to personal physical necessities.
- g) An investigator may not threaten a sworn employee who is the subject of an investigation with disciplinary action during an interrogation. An investigator may inform a sworn employee that failure to answer truthfully reasonable questions directly related to the investigation or to cooperate fully in the conduct of the investigation may result in disciplinary action.
- h) If prior notification of intent to record an interrogation is given to the other party, either the investigator or the sworn employee who is the subject of an interrogation may record the interrogation.
- i) If an investigation does not result in disciplinary action against a sworn employee but does result in a written reprimand or an adverse finding or determination regarding that person, the reprimand, finding, or determination may not be placed in that person's personnel file unless the person is first given an opportunity to read and sign the document. If the employee refuses to sign the reprimand, finding, or determination, it may be placed in the personnel file with a notation that the person refused to sign it. A sworn employee may respond in writing to a reprimand, finding, or determination that is placed in the person's personnel file under this subsection by submitting a written response to the Chief not later than the 10th day after the date the employee is asked to sign the document. The response shall be placed in the personnel file. An employee who receives a disciplinary action and who elects not to appeal the action may file a written response not later than the 10th day after the date the person is given written notice of the disciplinary action from the Chief.

6.1 ACCESS TO RECORDS BY EMPLOYEES UNDER INVESTIGATION

- a) Not less than forty-eight (48) hours before the Medic who is the subject of an investigation provides a statement to an investigator, the Medic shall be provided a copy of the complaint(s). The Department may omit the name and/or identity of the person making the complaint. In the event that the complaint(s) does not contain all allegations of misconduct under investigation, not less than forty-eight (48) hours before the investigator begins the initial oral or written interview of the

Medic, the investigator must inform the Medic in writing of the additional allegations being investigated. This subsection does not apply to an administrative hearing conducted for the purposes of determining whether the Department shall take disciplinary action against an Medic for alleged misconduct.

- b) Before the Medic who is the subject of an investigation provides a statement to an investigator, the Medic and his or her representative(s) shall be provided an opportunity to review any videotape, photograph, or other recording of the operative conduct or alleged injuries, if any, which is the subject of the allegations if such recording is within the possession or control of the City, unless the material is confidential by law, or evidence from a pending criminal investigation.
- c) An Medic who is the subject of an investigation is entitled to a copy of his or her statement to the OPC at the time the statement is finalized and signed by the employee. The statement remains confidential in the hands of the employee pursuant to 143.089(g), Department policy, and orders of non-communication about internal investigations, except for consultations with counsel and/or Association representatives who are not involved in the investigation.
- d) Before the Medic who is the subject of an investigation provides a statement to an investigator, the employee and his or her representative(s) shall be allowed to review the portions of any document(s) in which it is alleged or believed that the Medic provided false, incomplete, inconsistent, or conflicting information, or in which it is alleged that the employee omitted information in violation of any law or Department policy.
- e) Before the Medic who is the subject of an investigation provides a statement to an investigator, the employee and his or her representative(s) shall be allowed to review any report, supplemental report or other statement recorded or written by the Medic, setting forth particulars or facts regarding the operative conduct which is the subject of the allegation(s).
- f) Not less than forty-eight (48) hours before any administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Medic for alleged misconduct, the Medic and his or her representative shall be allowed up to five (5) hours to review any and all evidence gathered or obtained during the investigation, and not previously reviewed by the Medic. The evidence available for review shall include the OPC summary (Investigative Fact-Finding Report), if any. Evidence does not include attorney-client communications. Neither the Medic nor his or her representative will be permitted to make copies of any of the evidence reviewed.
- g) Not less than forty-eight (48) hours before any administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary

action against a Medic for alleged misconduct, the Department shall provide written notice of the alleged policy violations and the specific range of discipline being considered. In making the final decision as to discipline, if any, the Chief shall not be restricted to the alleged policy violations and/or the range of discipline provided pursuant to this subsection.

6.2 PLACING EMPLOYEES ON ADMINISTRATIVE LEAVE DURING AN INVESTIGATION

When a complaint has been initiated, the alleged actions by an employee may necessitate that employee being placed on paid Administrative Leave (ADL) during the course of the investigation. The following shall serve as guidelines for placing an employee on ADL.

- a) The decision to place an employee on ADL during an investigation and the subsequent removal of ADL lies solely with the Chief and/or his designee.
- b) Immediately upon placing an employee on ADL, the Chief and/or his designee shall notify the EMS HR Manager, or designee, the OPC, and if necessary the Medical Director, or designee.
- c) EMS HR will contact the employee and schedule a meeting with the employee and OPC within one (1) business day of being notified of the employee's ADL assignment. At this meeting:
 1. An EMS HR representative will provide the employee written notification of the Chief's decision to place him/her on ADL. The original document shall be signed and placed in the respective investigative file. The employee may retain a copy of the signed document.
 2. The OPC will provide the employee with a written Notice of Allegations and a written confidentiality document.
- d) This meeting is not disciplinary in nature.
- e) The employee will not be interviewed about the allegations at this meeting. See Section 6.0(e).
- f) The employee may be represented at this meeting by:
 1. An attorney of his/her choosing, or
 2. A representative of the employee association provided the representative was not in their chain-of-command at the time of the incident, is not in his/her chain-of-command at the time of the aforementioned meeting, and has no personal involvement in the investigation as a complainant or witness.
 3. Representation at this meeting is purely a courtesy. If the employee's representation is not available, the meeting will proceed as directed.
- g) This section speaks only to placing an employee on and off ADL for investigative purposes. This section does not preclude a supervisor from immediately removing an employee from an operations assignment should circumstances require.

6.3 ADMINISTRATIVE INVESTIGATION TOOLS

The results of any compelled technique can be used for any lawful purpose but will not be used against the involved employee in a criminal case except in the case of perjury or aggravated perjury where the employee provides false information in a sworn statement. When civilian employees are the subject of an investigation, the OPC Legal Advisor must be consulted prior to utilizing any of the following investigative tools.

- a) Sworn employees of this department may be administratively ordered by the Chief or designee to submit to:
 1. A blood, breath, urine and/or Oral Fluid test for alcohol and drugs.
 2. A polygraph examination.
 3. A psychological evaluation.
 4. Other medical or laboratory tests as deemed necessary.
 5. Conduct a video re-enactment.
 6. Be photographed.
 7. Participate in a physical lineup.
 8. Produce documents reasonably related to an investigation (e.g. financial documents, credit reports, phone records).
 9. Other administrative orders, as necessary.
- b) Employees may be compelled to disclose personal financial information if such information tends to indicate a conflict of interest with official duties.
- c) Employees shall have no expectation of privacy when using telephones, computers, radios, desks, filing cabinets, lockers, or any other type of equipment or storage space provided by the department. An investigative search of departmentally assigned areas (e.g. desks, lockers, office space, assigned vehicles) may be conducted upon a suspicion that official misconduct is involved.

6.4 DISPOSITION PROCESS

The OPC is responsible for recommending a disposition for each allegation based on the guidelines below.

- a) Once the OPC has completed their investigation they shall prepare an Investigative Fact-Finding Report for the EMS Chief. The OPC will report the findings on each allegation based on the preponderance of evidence, and will categorize each as follows:
 1. **Sustained** – When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.
 2. **Exonerated** – When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper according to

- departmental policy.
3. **Unfounded** – When the investigation discloses that the alleged act(s) did not occur.
 4. **Inconclusive (Not Sustained)** – When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.
 5. **Administratively Closed** – Complaints will be administratively closed under the following circumstances:
 - i. An administrative inquiry has been completed and no allegations were made or misconduct discovered.
 - ii. The case was classified as a Class C complaint.
 - iii. At the discretion of the EMS Chief or designee.
 6. **Retired or resigned under investigation.**
 7. **Information** – An incident maintained for documentation purposes only.
 8. **Supervisor Referral** – An informal complaint referred to a supervisor for his/her attention. See Section 3.1, “Class C Complaint”.
- b) The OPC will notify the Chief that the investigation is concluded and will schedule a meeting with the Chain-of-Command Committee in order to present the findings of the investigation. This Committee shall include the Assistant Chief of Operations, Division Chief and a Commander in the subject employee’s direct chain-of-command provided they are not involved in the investigation. If a member of the employee’s chain-of- command was involved in the investigation, a substitute employee of equal rank will replace them on the Chain-of-Command Committee. At no time shall the Committee consist of members that are of equal rank of the subject employee. The EMS HR Manager, or designee, will be present as a liaison to the Committee
1. For any allegation(s) categorized by the OPC as “sustained”, the Committee shall recommend to the EMS Chief via the EMS Chief of Staff an appropriate level of discipline based upon the type of violation committed. Levels of discipline are outlined in Section 7.2 of this procedure.
 2. For any allegations(s) categorized as anything other than “sustained”, the OPC will close the case and notify the EMS Chief. After the EMS Chief has been notified, the OPC will notify the subject employee of the results of the investigation on department memorandum.
- c) The Chief of Staff shall review with the Chief the Committee’s recommendation(s) and in all cases the EMS Chief shall make the final determination of disciplinary action.
- d) The EMS Chief shall review the status of any criminal charges or court rulings related to the allegations prior to taking corrective action. Any employee who is

the subject of an investigation is required to submit any court documents relevant to the allegations.

- e) If punitive disciplinary action is taken by the EMS Chief, the City Attorney's Office will approve a Suspension Document which will be delivered to the subject employee by the EMS Chief, or designee.
- f) The appeal process, if applicable, will be set forth in the Suspension Document.

7.0 DISCIPLINE PROCESS

The Discipline Process is a guide to be used by all levels of management in determining the appropriate discipline based upon the type of violation committed. This process does not create a binding procedural or substantive due process right for any employee.

The guidelines recommended do not diminish the authority of the EMS Chief in determining whatever disciplinary action is necessary to maintain the integrity of the department. The EMS Chief retains the full authority to make all disciplinary decisions. Deviation from this process, whether by the Chief or any other manager, does not violate any procedural or substantive rights of any employee unless the deviation violates a specific right guaranteed by law. The EMS Chief retains the right to dissolve this process at anytime, without consulting with, or obtaining the approval of any employee. In the event the Chief modifies or dissolves this process, any disciplinary meeting already scheduled with the Chief or designee will be handled under the provision(s) in place at the time it was scheduled. In the event the Chief exercises discretionary authority to modify or dissolve this process, that decision is final.

7.1 PHILOSOPHY AND GUIDING PRINCIPLES OF PROGRESSIVE DISCIPLINE

Progressive discipline is a process for responding to on-duty and off-duty job related behavior that does not meet expected and communicated performance standards. The primary purpose for progressive discipline is to assist the employee to understand that a performance problem or opportunity for improvement exists. The process features increasingly formal efforts to provide feedback to the employee so they can correct the problem.

The goal of progressive discipline is to improve employee performance. Progressive discipline is most successful when it assists an individual in becoming an effectively performing member of the organization. Failing that, progressive discipline enables the organization to fairly, and when appropriate, terminate employment.

Development of the Discipline Process was based upon several guiding principles:

- a) To provide motivation to employees to respect departmental values and adhere

to department policies, procedures, rules, and regulations.

- b) To encourage and maintain expected levels of performance through self discipline and acceptance of responsibility.
- c) To give employees a clear understanding of what is expected of them.
- d) To ensure that consequences for inappropriate behavior are clearly explained.
- e) To ensure that a consistent, fair, impartial, objective, timely, and unbiased disciplinary process exists.
- f) To encourage and reinforce positive behavior by identifying and correcting poor employee performance through counseling, training, and/or discipline.
- g) To use discipline as a corrective action.

7.2 DISCIPLINE LEVELS

Additional training and counseling or evaluation may be coupled with any of the below options when in the best interest of the department and/or the employee. Changes in assignment are at the discretion of the EMS Chief or designee. Any change in assignment may be warranted when in the best interest of the department and/or employee. All types of progressive discipline will be classified as informal or formal discipline and will be documented in the OPC. See Section 9.1 for definition of “informal” and “formal” discipline.

- a) **Oral Reprimand** – An official document of counseling notifying the employee that a department policy has been violated. It may be issued for any misconduct that the supervisor determines is necessary and appropriate to correct the problem. The original is sent to the OPC and a copy is given to the employee. An Oral Reprimand is considered an informal discipline and is not punitive.
- b) **Written Reprimand** – An official letter of reprimand notifying the employee that a department policy has been violated. It is issued for any misconduct or performance in which the supervisor determines this level of discipline is necessary to correct the problem. Generally, written reprimands will be issued when there is a continuation of problems or a supervisor determines a onetime event is serious enough to warrant a written record being placed in the employee's file. The original is sent to the OPC and a copy is given to the employee. A Written Reprimand is considered an informal discipline and is not punitive.
- c) **Temporary Suspension** – These may range from a 1-3 day, 4-15 day or an agreed upon 16-90 day suspension. When an employee receives a temporary suspension, the original suspension letter is sent to the Civil Service Commission; a copy shall go to the employee, be placed in the employee's OPC file, and provided to EMS-HR. A suspension may be given for any misconduct or performance problems as provided below:
 - 1. Progressive disciplinary measures such as counseling, oral reprimands,

and/or written reprimands have not been successful in correcting performance or conduct problems, or would not be appropriate given the circumstances. A suspension in this case would be part of the progressive discipline process and shall range from 1-15 days. Previous actions need not have been for the same violation in order to use suspension as a corrective measure. A compilation of different issues will enable a supervisor to apply a disciplinary suspension.

2. Progressive disciplinary measures, including lower level suspensions, have not corrected performance or conduct problems.
 3. The involved employee must agree to suspensions of 16-90 days in lieu of indefinite suspension.
- d) **Demotion Recommendation** – A recommendation to the Civil Service Commission of a permanent reduction in one or more steps in rank. The same guidelines provided in "Temporary Suspension" shall apply. This form of discipline may be used when a reduction is appropriate and will not transfer an irreconcilable problem to a different rank or grade. The demotion recommendation is sent to the Civil Service Commission; a copy shall go to the employee, placed in the employee's OPC file, and provided to EMS-HR.
- e) **Indefinite Suspension** – Equivalent to dismissal or termination from the department. When an indefinite suspension occurs the original suspension letter is sent to the Civil Service Commission; a copy shall go to the employee, be placed in the employee's OPC file, and provided to EMS-HR. A termination may only occur with the approval and direction of the EMS Chief as provided below:
1. Progressive disciplinary measures, including suspension, have not been successful in correcting performance or conduct problems, or retention of the employee would tend to bring discredit to the department, or any conduct deemed to warrant dismissal by the Chief.
- f) **Alternative Discipline by the Chief and Alternative Discipline by Agreement** – These forms of discipline will be authorized by the EMS Chief or designee and through consultation with the City Attorney's Office in compliance with Article 16 of the Meet and Confer Agreement.

7.3 FACTORS TO CONSIDER IN DETERMINING DISCIPLINE

In determining proper discipline, it is recognized that similar discipline should normally be imposed for similar violations; however, equal treatment does not necessitate identical discipline. The following noninclusive factors, if applicable to the particular case, should be considered, especially in those instances where more severe discipline is likely:

- a) The nature and seriousness of the violation and its relationship to the employee's duties and responsibilities.

- b) Multiple violations.
- c) The employee's motive (e.g. intentional act, technical mistake, inadvertent, or personal gain).
- d) Whether the employee's actions or speech involved bias or discrimination (the treatment or consideration based on class or category rather than individual merit, driven by partiality or prejudice).
- e) Whether the employee is in a supervisory or management role (it is the department's intent that individuals in a supervisory or management role will be held to a higher standard with regards to their conduct).
- f) The employee's past disciplinary and work record.
- g) The effect of the violation upon the department's confidence in the employee's future job performance.
- h) Whether the employee's conduct has brought discredit to the department.
- i) Whether the employee accepted responsibility for their actions.
- j) The consistency of the discipline with those imposed upon other employees for a similar offense.
- k) The progressive nature of discipline.

7.4 SUBSEQUENT CORRECTIVE ACTION

A violation is considered "subsequent" if it occurs within 36 months of the occurrence date of the last violation. Exceptions are those more serious policy violations that result in suspensions of more than three days. In those instances any past violation will be considered a previous occurrence.

7.5 ADMINISTRATION OF DISCIPLINE

After an investigation has been completed and the OPC has issued final approval on any sustained allegations, the following guidelines shall be applied.

- a) Any sustained allegation involving any discipline less than suspension will be forwarded to the employee's chain-of-command for closure.
 - 1. All paperwork related to the discipline and the original case file will be retained at the OPC.
- b) Any sustained allegation resulting in suspension will be delivered in an Administrative Hearing between the EMS Chief and subject employee.
 - 1. Per Article 15, Section 3 of the Meet & Confer Agreement and Section 6.1(g) of this procedure, not less than forty-eight (48) hours before any Administrative Hearing with the Chief, the subject employee's direct chain-of-command or HR Manager will provide the employee with a written Notice of Sustained Allegations, which shall include all alleged policy violations and the specific range of discipline being considered.

2. At the Administrative Hearing, the EMS Chief will review with the respondent the Notice of Sustained Allegations. This is the employee's opportunity to provide any additional information for the Chief's consideration in making a final decision. This meeting is not an evidentiary hearing, and the employee does not have the right to present or cross-examine witnesses.
3. It shall be optional for the subject employee to attend and answer any questions at the hearing. No portion of the Administrative Hearing constitutes an "investigation", and involvement in the hearing does not constitute being an "investigator" as defined in this procedure.
4. If the employee chooses not to attend or has determined that he/she will not answer any questions at the hearing, the employee must give twenty-four (24) notice to the Department by filing the required waiver.
5. If the employee attends, the employee may audiotape the portions of the hearing in which the employee is present.
6. Pending the outcome of the aforementioned meeting, the Chief may proceed and will provide the respondent with a written Suspension document, specifying the following:
 - i. The findings for each sustained allegation listed.
 - ii. The length of the suspension for sustained allegations.
 - iii. The employee's right to appeal and the prescribed appeals process.
7. In any meeting described in this section, the respondent has the right to be represented by either:
 - i. An attorney, or
 - ii. An Association representative of the Medic's choice provided the representative was not in their chain-of-command at the time of the incident, is not in his/her chain-of-command at the time of the Discipline Meeting, and has no personal involvement in the investigation as a complainant or witness.

7.6 DISCIPLINARY APPEALS

Guidelines for disciplinary appeals are described in Article 16 of the Meet & Confer Agreement, Rules and Regulations of the City of Austin Fire Fighters', Police Officers' and Emergency Medical Services Personnel's Civil Service Commission and Texas Local Government Code Chapter 143.

8.0 EMPLOYEE RIGHT TO REPRESENTATION

An employee who is the subject of an investigation or administrative inquiry shall have the right to be represented by either an attorney or an Association representative of the

employee's choice during any interview or meeting described in Sections 6 & 7 of this document, provided the attorney or representative complies with the OPC interview protocol.

9.0 RETALIATION

9.1 Retaliation or the threat of retaliation by an employee, or by an individual at the direction of an employee, against a complainant or a witness is strictly prohibited. A sustained violation of this subsection shall result in either a temporary or indefinite suspension.

10.0 CONFIDENTIALITY AND RETENTION OF INVESTIGATIVE FILES

10.1 CONFIDENTIALITY OF INFORMATION

- a) For purposes of this section:
 - 1. "Formal Discipline" means a disciplinary action at or above the level of a temporary suspension, reduction in rank and/or termination.
 - 2. "Informal Discipline" means a disciplinary action at or below the level of a written reprimand, including training recommendations and/or a performance improvement plan (PIP).
- b) All information relating to an open OPC investigation, or a closed OPC investigation which results in informal discipline, is considered confidential. Employees shall not disclose or discuss details of any open OPC case, or closed OPC case which resulted in informal discipline, with anyone except:
 - 1. Investigator(s) assigned to the case.
 - 2. The employee's attorney.
 - 3. The employee's chain-of-command.
 - 4. Other persons specifically designated by the EMS Chief or designee.
- c) OPC employees, including administrative staff, shall not disclose or discuss information about any investigation with anyone who does not have a legitimate need to know without first obtaining approval from the OPC Commander and OPC Legal Advisor.
- d) Confidentiality of Records and Misuse of Information are covered in Article 15, Section 4 of the Meet and Confer Agreement.

10.2 RECORDS RETENTION SCHEDULE

The EMS Chief of Staff or designee shall be the records management officer for the Office of Professional Conduct.

- a) All records of investigations shall be securely maintained for the minimum periods defined by the Texas Government Code Section 441.158 and Public

Safety Records Retention Schedule Section 4075-01:

1. No local government office may dispose of records listed in the schedule prior to the expiration of its retention period.
- b) Local Government Code Section 202.002 states the following:
 1. Records involved in litigation or records subject to a request pursuant to the Texas Public Information Act may not be destroyed until either the litigation is finalized or the request is resolved.
- c) Retention periods are from the final disposition date of the investigation. Once the retention period has passed the file shall be destroyed. The following is the established retention periods for records as adopted by the department:

10.3 OPEN RECORDS REQUESTS

Open records requests shall be handled as outlined in Policy 102 (Records Management and Release of Information).

APPENDIX A
FORMS



Office of Professional Conduct – Complaint Memorandum

Complainant: _____

Employee(s) involved: _____

Date and Time of Incident: _____

Location of Incident: _____

Details of the Complaint:

This complaint is my request that the Office of Professional Conduct initiate an administrative investigation in order to determine if any violation of departmental policy, civil service rules or state law has been committed by the employee.

Signature of Complainant

Date

Signature of Witness

Date



Office of Professional Conduct – Complaint Affidavit

BEFORE ME, the undersigned authority, personally appeared

Complainant Name: _____

Address: _____

Phone number(s): _____

Complaint

I request an administrative investigation in order to determine if any violation of departmental policy, civil service rules or state law has been committed by the employee.

Employee(s) involved: _____

Date and Time of Incident: _____

Location of Incident: _____

Details of the Complaint:

Report of a Clinical Concern

| | |
|----------------------------|-----------------------------|
| Date of Reported Concern: | Click here to enter a date. |
| Date of the Concern/Event: | |
| Cad Incident Number: | |

Contact Information for Reporting Person:

| | |
|--------------------|---------------------------|
| Name: | Click here to enter text. |
| Agency Name: | Austin Travis County EMS |
| Best Phone Number: | Click here to enter text. |
| Best E-Mail | Click here to enter text. |

Describe the Clinical Performance Concern and the pertinent facts related to it. DO NOT include any review/investigation findings, conclusions or personal comments:

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