

Administrative Investigations and Interviews

1002.1 PURPOSE AND SCOPE

Best Practice

This document provides procedures for administrative investigations and interviews conducted by the Toms River Fire Department.

Corresponding Policies:

Discriminatory Harassment
Conduct and Behavior
Personnel Complaints
Anti-Retaliation

1002.2 INITIAL STEPS

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- Don't ignore the complainant or the misconduct.
- Start a record of the complaint or misconduct by completing a complaint form in accordance with the Personnel Complaints Policy and Procedure.
- Collect and document the available facts and evidence.
- Prepare an initial report of the complaint for the chain of command.
- Investigate all complaints regardless of the merit or whether the complainant requests an investigation.
- There is no such thing as an off-the-record complaint.

1002.3 ELEMENTS OF AN INVESTIGATION

Best Practice

1002.3.1 COMMENCING THE INVESTIGATION

Best Practice **MODIFIED**

The following procedures should be followed with regard to any accused member subject to investigation by the Department:

- (a) Prior to any interview, the member should be informed of the nature of the investigation.
- (b) Interviews of accused members should be conducted during reasonable work hours of the member, and, if the member is off-duty, the member shall be compensated if required and approved.
- (c) To prevent confusion or misunderstanding, no more than two interviewers should ask questions of an accused member to prevent confusion or misunderstanding.

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- (d) All interviews shall be for a reasonable period or duration, and the member's personal needs shall be accommodated.
- (e) No member shall be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers. Any member refusing to answer questions directly related to the investigation may be ordered to answer questions and subject to discipline for failing to do so. Nothing administratively ordered may be provided to a criminal investigator.
- (f) The interviewer should record all interviews of members and witnesses, when legally permissible. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview should be provided to the member prior to any subsequent interview.
- (g) A member subjected to interviews that could result in punitive action shall have the right to have a representative of his/her choosing present during any interview. However, in order to maintain the integrity of each individual member's statement, involved members shall not consult or meet with representatives or attorneys collectively or in groups prior to being interviewed.
- (h) All members shall provide complete and truthful responses to questions posed during interviews.
- (i) No member may be compelled to submit to a deception detection device examination, nor shall any refusal to submit to such examination be mentioned in any investigation.

1002.3.2 THE INTERVIEWS

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- (a) Interviewing the complainant
 - 1. Issues to discuss with the complainant: Keep the interview questions to the current issue.
 - 2. Go over details contained in the complaint.
 - 3. If details are incomplete, ask the complainant to elaborate.
 - 4. If legally permissible, record the interview.
- (b) Interviewing the accused
 - 1. Issues to discuss with the accused: Keep the interview questions to the current issue.
 - 2. Review the specific accusations in the complaint with the accused.
 - 3. If legally permissible, record the interview.
- (c) Interviewing witnesses
 - 1. Issues to discuss with the witness: Keep the interview questions to the current issue.
 - 2. Ask witnesses specific questions about the complainant's allegations and the accused's responses.

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3. If legally permissible, record the interview.
- (d) Uncooperative witnesses
 1. Explain to witnesses that you understand their reluctance to participate in the investigation and that you are just trying to gather facts surrounding the alleged incident.
 2. If practicable, offer the witness an opportunity to have another employee, supervisor, or representative of the witness's choosing present during the interview.
- (e) Follow-up interviews
 1. Planning your interview questions can help reduce the need for follow-up questioning. While follow-up interviews may be necessary, try to keep them to a minimum. In the event, follow-up interviews are necessary, keep them limited to specific questions related to either newly discovered information or previously supplied answers that need more clarification.
- (f) *Garrity* Rights
 1. Ensure the accused understands this is an administrative investigation and statements made during the administrative investigation cannot be used against him/her in a criminal investigation.
- (g) *Weingarten* Rights
 1. If the accused is entitled to union representation, make sure it is offered.
- (h) Public Safety Officer Bill of Rights
 1. Ensure the accused is afforded any rights or privileges required by state law.

1002.3.3 RESULTS OF THE INVESTIGATION

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All aspects of the investigation should be thoroughly documented, including but not limited to the following:

- (a) Analysis of the investigation
- (b) Determination regarding the merits of the complaint
- (c) Determination of corrective action and/or disciplinary action
- (d) Preparation of report
- (e) Preparation of the investigation file
- (f) Discussion of the results between the investigator and the chain of command.

1002.4 REQUIRED DOCUMENTATION

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The following documents should be included in the completed investigation file:

- Complaint or memorandum memorializing a verbal complaint

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- Collective bargaining agreement, if applicable
- Records of any previous charges, complaints, or grievances filed by or against the complainant or the accused within the permissible statutory period or other governing documents
- Copies of relevant department policies and records of whether the complainant and accused each received the documents and the appropriate training
- Signed acknowledgment of *Garrity* and/or *Weingarten* rights, if applicable.
- Final investigation report

Investigations of complaints should be timely, detailed, complete, and follow this format:

- **Introduction** - Include the identity of the member, the identity of the assigned investigators, the initial date, and the source of the complaint.
- **Synopsis** - Provide a brief summary of the facts giving rise to the investigation.
- **Summary of allegations** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation.
- **Evidence as to each allegation** - Each allegation should be set forth with the details of the evidence applicable to each allegation and include comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.
- **Conclusion** - A recommendation regarding further action or disposition should be provided.
- **Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1002.5 UNIVERSAL PRACTICES

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Investigators

- Investigators should be unbiased.
- No friendship or reporting relationship with either the complainant or the accused should exist to the extent practicable.
- Investigators should have training to respond to issues and complaints of harassment.
- Whenever possible, assign two investigators to the case.
- Whenever possible, assign investigators of multiple ranks.
- Consider retaining an independent investigator if:
 - The investigation could create a conflict of interest.
 - The investigation involves multiple members of the department.
 - The investigation involves chief officers.

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- Follow policies for preventing harassment, discrimination, and retaliation.
- If interviews are recorded:
 - Advise the individual verbally and in writing that they are being recorded.
 - Obtain a signed acknowledgment from the individual that they understand their interview is being recorded.

1002.6 CORRESPONDING PROCEDURES

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Personnel involved in a disciplinary action may need to consult the following procedures:

Discipline

Personnel Complaints

1002.7 WORKSHEETS

Best Practice

1002.7.1 ADMINISTRATIVE INVESTIGATIONS AND INTERVIEWS WORKSHEET

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Activity	Responsible Member	Comments/Status
Request all necessary documents/reports		
Inform complainant of investigator's name and complaint number within three days of assignment		
Make any notifications to the accused member's labor representative as required by labor agreements		
Notify the accused member of the complaint		
Conduct all necessary interviews during normal working hours		
Advise complainant of any applicable <i>Garrity</i> and/or <i>Weingarten</i> rights, as well as any rights or privileges required by an applicable state public safety officer bill of rights		
Interview complainant		

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Advise accused member of any applicable <i>Garrity</i> and/or <i>Weingarten</i> rights, as well as any rights or privileges required by an applicable state public safety officer bill of rights		
Interview accused		
Decide whether to interview witnesses (Yes/No)		
Advise witnesses of any applicable <i>Garrity</i> and/or <i>Weingarten</i> rights, as well as any rights or privileges required by an applicable state public safety officer bill of rights		
Witness interviews complete, if applicable		
Investigation report, with recommendations, complete		

1002.7.2 RETALIATION AVOIDANCE WORKSHEET

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Activity	Responsible Member	Comments/Status
Give complete, undivided, and sincere attention to the complainant, witnesses, and the accused.		
Document all conversations and correspondence, including voicemails and emails, with complainant, witnesses, and the accused.		
Avoid any personal actions that may be interpreted as reprisal or intimidation against a member for filing a complaint, participating in the investigation, or opposing a discriminatory practice.		