

Personnel Complaints

1020.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Bay Area Rapid Transit Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1020.1.1 DEFINITIONS

Personnel complaints shall be defined as any allegation of misconduct or improper job performance against any Department employee that, if true, would constitute a violation of Department policy, federal, state or local law. When an allegation warrants investigation, such complaints will be referred to the Internal Affairs Unit for assignment.

If a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

Definitions:

- (a) **Allegation:** An unproven accusation that a member of the Police Department violated Department/District policy or procedure, or the law.
- (b) **Misconduct:** An act or omission by a Department member that is a violation of Department/District policy or procedure, or the law; which if sustained, could result in disciplinary action.
- (c) **Formal Complaint:** An expression of dissatisfaction or disapproval in regards to the performance of a Police Department employee.
- (d) **Informal Complaint:** A comment on the actions of a Department employee, where either the reporting party expressly states that he or she does not feel that the matter should be formally investigated (with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee), or the Department determines that the nature of the allegation(s) indicates that the investigation should be handled as an Informal Complaint.
- (e) **Supervisor Referral:** For instances involving an Informal Complaint, the Internal Affairs Unit may address the issue through a Supervisor Referral. An assigned supervisor would then address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Unit.
 - 1. If the alleged involved employee cannot be identified by the complainant or through investigation by Internal Affairs, then the Supervisory Referral will be attributed to "unknown" employee.
 - 2. If the involved employee has a repeated history of similar complaints, the incident may be formally investigated.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

3. If the nature of the allegation(s) warrants investigation, then a formal investigation will be conducted.
 4. Generally, the following will not be addressed through a Supervisory Referral: allegations of excessive/improper force, racial animus, bias-based policing, or workplace discrimination (exceptions may only be approved by the Chief of Police or his/her designee).
- (f) **Complaint Mediation Program:** For instances involving an Informal Complaint, the issue may also be addressed through Complaint Mediation as defined and specified in Policy 1021. Internal Affairs personnel will advise complainants of the Mediation Program option if the complaint is eligible for mediation.
1. Participation in the Complaint Mediation Program must be voluntary for both the complainant(s) and the involved employee(s).
 2. Complaints that include any of the following allegations will not be eligible for the Complaint Mediation program:
 - (a) Use of Deadly Force
 - (b) Suspicious and Wrongful Deaths
 - (c) Unnecessary or Excessive Use of Force
 - (d) Truthfulness
 - (e) Racial Animus
 - (f) Bias-Based Policing and/or Racial Profiling
 - (g) Sexual Orientation Bias
 - (h) Sexual Harassment
 - (i) Arrest or Detention
 - (j) Search or Seizure
 - (k) Reporting Misconduct
 - (l) Workplace Discrimination/Harassment
 - (m) Supervision
 - (n) Substantial injury suffered by any of the involved parties
 3. The Chief of Police, or the Chief's designee, at his or her discretion, may deem any complaint ineligible for mediation.
- (g) **Inquiry:** A question or comment regarding the actions of a Department employee or the implementation of Department policy, with no allegation of misconduct. An inquiry could also be a circumstance where a complainant initiates a complaint with Internal Affairs; however it is later determined that the involved party is not a BART Police employee. The case will be referred to the correct agency or department. The BART inquiry will be Administratively Closed.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- (h) **Service Review:** When a citizen/customer raises a concern pertaining to a global practice throughout the Department such as Department policy, procedure and/or tactics. Depending on the circumstances, the concern may be evaluated and addressed through a Service Review conducted by Internal Affairs, a designated review committee, or a member of Command Staff. When appropriate, a Service Review could result in a change to Department policy, training and/or tactics.
- (i) **Administrative Closure:** Allegations that are received and documented; however the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

A case may be administratively closed under (but not limited to) the following circumstances:

- The complaint fails to articulate an act, or failure to act, which would constitute a violation of policy, procedure or law that could lead to discipline if proven true.
- The complaint is received after one year or more has elapsed from the date of the incident, making it difficult to investigate the incident in a thorough, fair, and complete manner. (Particularly, allegations such as courtesy or minor procedural violations may be Administratively Closed if the Department is not made aware of the complaint in a timely manner.)
- The complaint lacks specificity and the complainant either refuses to cooperate or becomes unavailable to provide information necessary to investigate the incident.
- Complaints limited to parking or infraction citations, where there is no allegation of misconduct, shall be referred to the parking citation appeals process or the respective court.
- Complaints that appear to not be based in reality may be administratively closed, including but not limited to the following:
 - The complaint appears hallucinatory and/or fantastical, and there does not appear to be facts available to ground the complaint in reality.
 - The complaint is grossly illogical and/or incomprehensible.
 - The complaint centers on the alleged existence of a broad conspiracy; however there are no articulated facts to be investigated.
 - The complaint is largely similar in content and/or nature to a previous complaint brought by the same complainant, and the previous complaint resulted in a finding of "Unfounded."

A complaint may also be administratively closed under the following circumstances:

- If the incident giving rise to the complaint is recorded on video (body-worn video, surveillance video, and/or any other available video), and the video directly and completely refutes all allegations, then the complaint may be administratively closed based on the following conditions:

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- Internal Affairs reviews the complaint and the video and determines that the allegation is either unfounded or exonerated based on the video, and
- Internal Affairs determines that no further investigation is necessary to unfound or exonerate the allegation and
- The BART Office of Independent Police Auditor (OIPA) exercises its authority under the BART Citizen Oversight Model to review the Internal Affairs investigative processes and findings and determines that the findings and administrative closure are justified.
- In these circumstances, and only after review by OIPA pursuant to the Model, Internal Affairs will document the allegation, summarize the video, and justify a disposition of unfounded or exonerated in an Administrative Closure memorandum to file.
- If OIPA determines that the evidence does not support a finding of unfounded or exonerated and/or that an administrative closure is inappropriate, then a full Internal Affairs investigation will be conducted.

If a complaining party initiates a complaint but then either refuses to cooperate with the investigation or becomes unavailable, the Internal Affairs Unit will exercise due diligence and proceed with an investigation. Based on a lack of information, the Chief of Police or his/her designee may determine that a matter does not need to be classified as a personnel complaint and the investigation may be administratively closed. However, depending on the seriousness of the complaint and the availability of information, further investigation may be conducted by the Internal Affairs Unit.

1020.1.2 ALLEGATION CLASSIFICATIONS

The following classifications of allegations will be used. The purpose of these classifications is to objectively characterize the potential misconduct while avoiding the use of value-laden words that could prejudice the investigation.

- (a) **Arrest or Detention:** An allegation that an arrest lacked probable cause or a detention lacked reasonable suspicion.
- (b) **Bias-Based Policing:** An allegation that a Department member engaged in conduct based on a person's race, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identify, medical condition, or disability.
- (c) **Courtesy:** An allegation that a Department member inappropriately used profane or derogatory language, obscene gesture, or an unprofessional demeanor during a contact with a member of the public.
- (d) **Conduct Unbecoming:** An allegation that a member's conduct, either on or off-duty, was conduct that a reasonable person would find unbecoming a police employee. The nature of the conduct could potentially reflect adversely upon the Department.
- (e) **Force:** An allegation that the amount of force used by a Department member was not objectively reasonable.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- (f) **Neglect of Duty:** An allegation that a Department member neglected his/her duties and failed to take action as required by law, or by Department policy or procedure, or in compliance with a lawfully given order from a supervisor.
- (g) **Performance of Duty:** An allegation that a Department member did not exercise an appropriate amount of effort to meet Department expectations in the performance of his/her duty per Department policy, practice or procedure.
- (h) **Policy/Procedure:** An allegation that action taken by a Department member did not follow appropriate Department/District policy, procedures or guidelines.
- (i) **Policy Complaint:** An allegation regarding a current Department policy that was properly implemented by a Department member; but which the complainant believes is inappropriate or not valid. A policy complaint is not grounds for discipline.
- (j) **Reporting Misconduct:** An allegation that a Department member failed to notify a Department supervisor of misconduct that threatens the rights of private persons and/or the well being and reputation of the Department.
- (k) **Racial Animus:** An alleged expression or act of animosity toward an individual or group based on race or ethnicity.
- (l) **Supervision:** An allegation that a supervisor did not detect a pattern of misconduct by a Department member that he/she reasonably should have known about; and/or an allegation that a supervisor did not properly supervise and take corrective action for misconduct that he/she knows or reasonably should have known about.
- (m) **Search Or Seizure:** An allegation that a search or seizure was conducted by a Department member in violation of the 4th Amendment.
- (n) **Truthfulness:** An allegation that a Department member knowingly made a false statement or purposely omitted pertinent facts to a supervisor, in a police report, court testimony, or investigative interview conducted by the Department; or the fabrication or destruction of evidence.
- (o) **Workplace Discrimination and (WH) Workplace Harassment:** See BART Operations Rules and Procedures Manual section 1307.

The definitions of Discrimination and Harassment only apply to workplace interactions between BART employees and to Department Initiated Investigations that arise from allegations of workplace discrimination and harassment. Discrimination or harassment by Department members toward members of the public shall be characterized as an allegation of Bias Based Policing (BBP) and/or Racial Animus.

1020.2 POLICY

The Bay Area Rapid Transit Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements. This will include all complaints against the agency or its employees, including those complaints made anonymously.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1020.2.1 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, in writing, by e-mail, or by telephoning the Department.

- (a) Any Department employee who is informed of potential misconduct shall immediately notify a supervisor.
- (b) During normal operational hours, allegations of misconduct shall be referred to the Internal Affairs Unit. When an Internal Affairs investigator is unavailable, the complainant will be put in contact with a Watch Commander, or lastly a Zone Sergeant.
- (c) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint.
- (d) Supervisors shall receive and document all complaints from any source alleging misconduct of an employee.
 - (a) If the reporting party states that they would like to make a Formal Complaint, the supervisor shall use a complaint intake form to document the reporting person's contact information and the nature of the allegation. The supervisor shall then forward the information to the Internal Affairs Unit.
 - (b) If the reporting person makes an Informal Complaint, the receiving supervisor will forward the information to the Internal Affairs Unit.
 - (c) Even in the absence of a Formal or Informal Complaint request, if the nature of the allegation(s) warrants investigation and/or could result in discipline, then the statements made by the reporting person and their contact information shall be documented on a complaint intake form and forwarded to the Internal Affairs Unit.
- (e) When a complainant is intoxicated to a degree that his/her physical state may significantly inhibit his/her ability to give a thorough and complete statement, a supervisor should not attempt to take a detailed statement at that time. Instead, the supervisor should take a brief recorded statement, obtain the complainant's contact information, and give the complainant a complaint form for future reference. The Office of Internal Affairs will take appropriate actions to contact the complainant and take a detailed statement at a time when the complainant is no longer impaired due to intoxication.

1020.2.2 DEPARTMENT INITIATED INVESTIGATIONS

Allegations of misconduct generated within the police department that cannot be addressed at the supervisory level will be investigated through the Internal Affairs Unit.

- (a) Any Department employee who witnesses potential misconduct shall immediately notify a supervisor.
- (b) Allegations of misconduct may be reported to the Department by employees, union representatives, or supervisors.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- (c) The Internal Affairs Unit may initiate an allegation of misconduct based on cause.
- (d) If an investigation discloses misconduct or improper job performance which was not included in the original allegation(s), the investigation will address the additional allegation(s).

1020.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1020.3.1 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1020.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1020.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other District facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1020.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7). The Office of Internal Affairs will additionally provide complainants with a brochure from the BART Office of the Independent Police Auditor.

1020.4.3 AVAILABILITY OF WRITTEN PROCEDURES

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

1020.4.4 HATE COMPLAINTS AGAINST PEACE OFFICERS

Internal complaints or complaints from the public shall be accepted and investigated in accordance with this policy where it is alleged that an officer has in the previous seven years, and since 18 years of age, engaged in membership in a hate group, participated in a hate group activity, or advocated any public expression of hate (Penal Code § 13682).

1020.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form and emailed to the Office of Internal Affairs. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

1020.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1020.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
- (a) The original complaint form will be directed to the Office of Internal Affairs of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- (b) In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Deputy Chief or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
 - (a) Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 - (b) If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Office of Internal Affairs.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Office of Internal Affairs and the Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Human Resources Department, the District's Office of Civil Rights, and the Office of Internal Affairs for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Office of Internal Affairs, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1020.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Internal Affairs Division, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, ~~he/she shall~~ they shall be compensated.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- (b) Unless waived by the member, interviews of an accused member shall be at the Bay Area Rapid Transit Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank, and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - 1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 - 2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each ~~individual's~~ individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

~~No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland* . However, an investigation may be based on the underlying acts~~

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

~~or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).~~

1020.6.2 LIMITATIONS ON INVESTIGATIONS

Investigations shall not be undertaken against any officer in the following limited circumstances:

- (a) The officer has been placed on a prosecutor's *Brady* list, or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).
 - 1. An investigation may be initiated based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* .
- (b) A court finding against an officer in a challenge brought under Penal Code § 745 (California Racial Justice Act of 2020) (Government Code § 3305.6).
 - 1. An investigation may be Initiated based on the underlying acts or omissions which formed the basis of the action brought pursuant to Penal Code § 745 (Government Code § 3305.6).

1020.6.3 INTERNAL AFFAIRS INVESTIGATION PROCESS

- (a) The Internal Affairs Unit shall be the principal entity for receiving, classifying, assigning, investigating, and filing allegations of misconduct. All allegations of misconduct will be forwarded to the Internal Affairs Unit.
- (b) The Internal Affairs Unit is responsible for case tracking and the assignment of due dates for allegation of misconduct investigations. The assigned investigator is expected to complete each investigation in a timely manner. The investigator will conduct a thorough, accurate, and objective investigation.
- (c) The Internal Affairs Unit will apprise the Chief of Police of all allegations of misconduct and status of investigations.
- (d) If a command-level officer is the subject of an allegation of misconduct, the Chief of Police will review the allegation and assign an appropriate investigator. If the Chief of Police is the subject of an allegation, the BART General Manager will review the allegation and assign an appropriate investigator.

1020.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including 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.

1020.6.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1020.6.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

1020.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

1020.7 ADMINISTRATIVE SEARCHES

An employee of this Department may be administratively ordered to submit to a blood, breath, or urine test for alcohol and drugs under any of the following circumstances:

- When the employee, whether on or off-duty, is involved in a shooting or police related death.
- When the employee is involved in an injury or fatal accident while on duty.
- When the employee is involved in an injury or fatal accident while operating any District owned vehicle whether on or off-duty.
- When the employee is found to be exhibiting objective symptoms of intoxication or drug influence while on duty.

The use of compelled testing results shall be restricted to the administrative investigation.

Any employee may also be required to be photographed, video and/or audio recorded, and/or ordered to participate in a line up during an Internal Affairs investigation.

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

1020.7.1 DISCLOSURE OF FINANCIAL INFORMATION

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

1020.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

When an employee is placed on administrative leave with conditions that prohibit access to District facilities, the Department should conduct an assessment to determine if the terms of the administrative leave should be transmitted to the Department. In situations where the safety and/or security of the Department would be enhanced by notifying Department employees of the restrictions placed on the subject employee, the Watch Commander should send a confidential email message to the "BPD_Users" email list notifying the Department of the conditions restricting the subject employee's access to District facilities. The Watch Commander should use a standardized template for the confidential message which will be provided by the Internal Affairs unit. The message shall not contain restricted information about the nature of the allegations in the complaint against the subject employee. If the employee is cleared to return to work from administrative leave, the Watch Commander shall send an email message restoring access permission for the subject employee.

1020.8.1 ACCESS TO INTERNAL AFFAIRS RECORDS

Only those members of the Department authorized by the Chief of Police will be allowed access to Internal Affairs records. In addition, the Office of the Independent Police Auditor is authorized to access to the Internal Affairs records. Information within the record shall be kept with strict confidentiality. The following personnel are authorized access to a member's personnel file, with the indicated limitations:

- (a) The member: Members may review their own personnel file during normal business hours, after making the request through the Office of the Chief of Police.
- (b) Internal Affairs personnel: Any member assigned to the Internal Affairs Unit may review another member's Internal Affairs records for the purpose of effectively completing an internal investigation.
- (c) Outside requests: Any requests to review a member's Internal Affairs records by an outside agency must be approved by the BART Legal Department in accordance with California Evidence Code Section 1043, or requested pursuant to a Federal court order.

1020.9 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

The Bay Area Rapid Transit Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1020.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1020.10.1 DIVISION COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Division Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Division Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Division Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1020.10.2 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a pre-disciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 - 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 - 2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1020.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(f)).

1020.10.4 NOTICE REQUIREMENTS

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(f)).

1020.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

1020.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline (Penal Code § 13510.8).

1020.13 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding, and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

Additionally, any evidence of a court finding that an officer violated Penal Code § 745 (California Racial Justice Act of 2020) shall not be introduced for any purpose in any administration appeal of a punitive action (Government Code § 3305.6).

1020.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

1020.15 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

1020.16 REQUIRED REPORTING TO POST

The Chief of Police or the authorized designee shall notify POST on the appropriate POST form within 10 days of certain officer personnel events, including but not limited to (Penal Code § 13510.9):

- (a) Termination or separation from employment or appointment. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.
 - 1. A POST affidavit-of-separation form shall be executed and maintained by the Department and submitted to POST as required by Penal Code § 13510.9 and 11 CCR 1003.
- (b) Events that could affect an officer's POST certification, such as:
 - 1. Complaints, charges, or allegations of serious misconduct (as defined by Penal Code § 13510.8).
 - 2. Findings of civilian review boards.
 - 3. Final dispositions of any investigations.
 - 4. Civil judgments or court findings based on conduct, or settlement of a civil claim against an officer or the Bay Area Rapid Transit Police Department based on allegations of conduct by an officer.

The Chief of Police or the authorized designee shall be responsible for providing POST access to or duplication of investigation documentation (e.g., physical or documentary evidence, witness statements, analysis, conclusions) within the applicable timeframe provided in Penal Code § 13510.9.

1020.16.1 NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT

The Chief of Police or the authorized designee shall report allegations of serious misconduct by an officer to POST and the report shall include the following (11 CCR 1207):

- (a) Name of the Department
- (b) Administrative case number
- (c) Name, current address, and phone number of the complainant, if available
- (d) Name, POST ID, current address, and phone number of the involved officer
- (e) A summary of the alleged misconduct including:
 - 1. A narrative of the allegations
 - 2. Date and time of incidents
 - 3. Location of occurrence
 - 4. Any witness information, if available
 - 5. Summary of arrest or indictment of involved officer

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Personnel Complaints

- (f) A change in employment status of the involved officer (e.g., administrative leave, suspension, termination)
- (g) Name and contact information of the assigned investigator

The Chief of Police or the authorized designee shall provide updates of the investigation to POST every 90 days until the final disposition in the method designated by POST (11 CCR 1207).

Upon completion of the investigation, the Chief of Police or the authorized designee shall submit to POST the final disposition of the investigation as well as investigation materials and the officer's service record as provided by 11 CCR 1207.

1020.16.2 ADDITIONAL NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT

Additional notification shall be made to POST (11 CCR 1207):

- (a) If the imposed disciplinary action is pending appeal or other review through an administrative or judicial proceeding:
 - 1. The Department shall provide the name of the body conducting the proceeding.
 - 2. The status of the proceeding, if known.
- (b) If criminal charges are pending:
 - 1. The name of the court having jurisdiction over the criminal charges against the officer.
 - 2. The status of the criminal case, if known.