

TELEMASP BULLETIN

TEXAS LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS PROGRAM

August 1994

Vol. 1, No. 5

Written Policy Directives: Citizen Complaints

Description of Citizen Complaint Policies

Policies for handling citizen complaints vary significantly from agency to agency. Typically these policies specify the mechanisms for complaint review (either internal, external or a combination of the two) and describe who is responsible for various stages of the process, i.e., the investigation. In addition, complaint findings, such as "exonerated," are explained and criteria for these dispositions are listed. A summary of suggested penalties to be imposed when complaints are sustained is also stipulated.

Purpose of the Bulletin

This bulletin provides general information concerning citizen complaints against the police and a brief description of policies that are used in Texas to deal with these complaints. The policies obtained from various agencies which have internal mechanisms of complaint review are reviewed using the Model Policy for handling citizen complaints developed by the Police Executive Research Forum (1981), excerpts of which are contained in this bulletin. Although none of the agencies had provisions for external or civilian review, Kerstetter's (1985) models of external review are examined for comparison.

Introduction

Although the police are only one of many government agencies that are subject to review, their high visibility often causes them to be the focus of more intense examination. It is imperative that adequate grievance procedures for alleged

misconduct by the police be in place, not only to increase public confidence, but also contribute to effective government. Procedures for handling citizen complaints should facilitate public cooperation. In addition, the public must perceive police agencies as being receptive to their needs (More, 1992).

Due to the wide variety of procedures for handling citizen complaints and the number and types of complaints, generalizable information is limited. Complaint procedures vary from jurisdiction to jurisdiction as well as from state to state. The number of complaints does not necessarily reflect the quality of officer/citizen relations. Complaints vary according to the type of procedures for handling complaints and the public's awareness of complaint procedures. The more difficult procedures are to follow, the more likely complaints will consist of only serious allegations (Homant, 1989). Thus agencies more sensitive to the quality of citizen interaction often have statistically higher complaint rates.

According to the National Advisory Commission on Civil Disorders (1968), complaint procedures must be easily filed with little formality. Forms should be readily available and self-explanatory. In addition, it should be possible to make complaints in a large municipality in more than a single central location. If necessary, police officers should be available to respond to the residences of individuals making complaints if no other way is possible for the individual to be accommodated. The Commission indicated that a key factor in handling citizen complaints is in creating a process that satisfies the public (National Advisory Commission on Civil Disorders, in More, 1992).

Types/Findings of Complaints

More and Wegener (1990) categorize complaints into three types according to who is filing the complaint: primary, secondary, and anonymous. Primary complaints are those that are filed by the alleged victim of the misconduct. Secondary complaints are those that are filed by third parties who witnessed the misconduct. Anonymous complaints are those filed by an unidentified source (More and Wegener in More, 1992). Primary complaints appear to be most common.

ANONYMOUS COMPLAINTS

Twelve (70%) of the Texas departments that were reviewed have provisions for dealing with anonymous complaints in their policies. All of the provisions indicate that anonymous complaints are to be handled in the same manner as those which are submitted by citizens who identify themselves. No less emphasis is placed on a complaint simply because of the anonymity of the complainant. Investigations of anonymous complaints are terminated only if there is insufficient information to pursue the investigation.

Allegations of improper behavior of the police usually involve violations of the law or inappropriate conduct (Terrill, 1982). Types of police misconduct which often generate complaints are unnecessary or excessive use of force, verbal abuse, discourtesy, harassment, improper attitude, and use of ethnic slurs (Wagner and Decker, 1989).

Findings of complaints usually result in one of four outcomes: sustained, not sustained, exonerated, or unfounded. Sustained complaints are those in which it is determined that the officer did commit the alleged offense. The sustained category of complaints consists of those which are a result of improper conduct, meaning the officer is at fault, or policy failure, meaning that the officer followed policy, but the victim was unjustly injured. Complaints that are not sustained are those in which there is not enough information to make a decision. The exoneration of accused officers occurs when the alleged incidents did occur but the conduct was determined to have been reasonable. Unfounded complaints are those in which the alleged misconduct did not occur. Most complaints result in the classification of either not sustained or unfounded, because many complaints are indeed spurious. Citizens often use the process as a harassment technique to retaliate against officers taking legitimate enforcement action. Sustained complaints usually make up 5% or less of total complaints in most cities (Homant, 1989).

BEHAVIORAL CAUSE INVESTIGATIONS

Three Texas departments had provisions for Behavioral Cause Investigations which may be undertaken as part of the investigation of citizen complaints. This procedure is generally reserved for employees who receive sustained complaints and/or repeated complaints of the same or similar nature and who display behavior which may be indicative of an emotional difficulty, such as coping with stress. The investigation/examination is usually conducted by a licensed psychiatrist or psychologist. The Behavioral Cause Investigation is believed to be a positive mechanism for both the employee and the agency by providing an avenue for employee assistance which might not always be readily available, as well as ensuring that employees are best able to fulfill their duties within the agency.

Internal v. External Review

Internal—Traditionally, handling of citizen complaints against the police has been the responsibility of the police agency; therefore, the most common type of police control has been internal (Terrill, 1982). Both Terrill (1980) and Kerstetter (1985) indicate that possibly 80% of agencies have only internal review. In a more recent study, however, Walker and Bumphus (1992) indicate that 68% of the agencies in 50 of the largest cities have some form of external review.

Internal review is usually undertaken by a board of high-ranking officers within the police organization, or in some cases, non-sworn civilian personnel who must investigate complaints and make recommendations on the basis of the investigation (More, 1992). Although several personnel are involved in the review process, decisions concerning the final disposition of complaints appear to remain in the hands of the agency's chief executive in most departments.

Supporters of internal review of the police without any form of civilian involvement contend that the police bring their "expertise" to the process, which provides for more accurate review (Wagner and Decker, 1989). In other words, because the public often does not have an adequate perception of police work, it is better to have someone who is familiar with the details of the job to evaluate allegations of improper conduct. Supporters also assert that when there is civilian review of complaints, the process lacks credibility with police officers. Supporters contend that bureaucracies should be left to their own devices when there are problems to be solved. Organizations should be independent of others and ultimately be responsible for their own actions. Finally, civilian review is said to engender the appearance of an inability of the police to handle their own problems or properly control their personnel (Wagner and Decker, 1989).

Critics of internal review of citizen complaints contend that this form of review discourages citizen complaints. Officers often treat citizens who want to file a complaint inappropriately. Further, it is believed that the police cannot maintain objectivity when reviewing complaints against members of their own agencies. It is also thought that there is potential for inadequate adversary hearings and/or lack of protection for officers when only internal review is utilized (Terrill, 1982). Finally, a strictly internal review may give the appearance of police bias against citizens (Homant, 1989).

OPEN RECORDS ACT

In sections on record maintenance of complaints, several of the reviewed Texas departments noted that pursuant to the Open Records Act, records consisting of dates of complaints, types of complaints, officer(s) involved, final classification of complaint, and resolution are available for review through proper procedures. Generally, individuals must submit a written request through proper channels to view records. In addition to this procedure for obtaining information regarding the types and nature of complaints, some departments publish cumulative statistics in local newspapers or provide data on these incidents at the local library.

External (Civilian)—Participation of citizens in the review of complaints against the police generally takes one of three forms: civilian review, civilian input, and civilian monitor (Kerstetter, 1970). The civilian review model gives the public the most authority by allowing them to investigate, adjudicate and determine penalties for sustained cases of misconduct. This model has also met the most resistance because many believe that it is impossible for individuals without police experience to effectively review complaints against the police. Further, it is argued that this form of review may cause a decline in police morale and perhaps increase substandard performance among personnel. The civilian input model provides for the receipt of complaints and investigation by the civilian body and is perhaps the most readily accepted. The civilian monitor model provides only for external review safeguards. Basically, the monitor model provides for the review of the process itself, while not allowing participation in the actual review process by civilian members (Kerstetter, 1985).

Some practitioners favor civilian review, especially in the case of appellate review and the monitoring of Internal Affairs Divisions, because the process facilitates the appearance of objectivity by the police. However, many indicate that a strong internal mechanism for complaint review is also necessary to maintain a balance between the police and community (Homant, 1989).

Description of Citizen Complaint Policies in Texas

Seventeen citizen complaint policies were reviewed for this bulletin. Most of the policies conform to guidelines suggested by the Police Executive Research Forum in the Model Policy with minor adaptations. The agencies provide clear statements of purpose for dealing with citizen complaints, mechanisms for investigations of complaints with specific instructions, classification of complaints and findings, as well as the impositions of discipline as a result of sustained complaints.

A majority (59%) of the reviewed Texas departments have procedures for handling citizen complaints in orders or directives concerning the operation of the Internal Affairs Division of the department. Four agencies have these procedures under the Employee Code of Conduct. One department has a Professional Standards Unit of the Support Services Division which is responsible for handling citizen complaints. This division functions much like Internal Affairs. The remainder of the departments have these procedures in the sections on personnel management, administrative inquiry, and complaints and grievances. None of these agencies have provisions for civilian review in their policies. It appears that the agencies have mechanisms of internal review, each of which is ultimately governed by the chief of police or sheriff of the agency.

Two agencies have a method of informing the public of procedures for filing a complaint which is specifically stated in their policy. The agencies post procedures for filing complaints in various locations in the department. Specific names and phone numbers of individuals assigned to handle these matters are listed in this posting. In addition, in one agency, the policy states that members of the department are to make periodic appearances to civic groups to inform the public of these procedures.

All agencies make it clear that the purpose of investigating citizen complaints is twofold. The goal is to insure that integrity is maintained within the department while promoting justice and fairness for both citizens and employees alike. The agencies emphasize that while meeting the needs of the public by promptly investigating and adjudicating complaints, it is also imperative that employees' interests are protected from false complaints through open and fair procedures.



POLICE AGENCY HANDLING OF CITIZEN COMPLAINTS: A MODEL POLICY STATEMENT

A Model Policy statement was developed by the Police Executive Research Forum to serve as a guideline for police administrators. Although portions of this policy must be modified to meet state and local requirements, it is useful as a point of reference for effective policy making. The following are selected excerpts and synopses from the PERF Model Policy which most frequently appear in policy manuals in Texas law enforcement agencies reviewed for this bulletin.

Statement of Purpose

The purpose of the Model Policy is to improve the quality of police services. This is accomplished in three ways. First, through the provision of meaningful and effective complaint procedures, citizen confidence in the integrity of police actions increases which engenders community support and confidence in the police department. Improving the relationship between the police and the citizens they serve facilitates police-citizen cooperation, an element vital to the department's ability to achieve its goals. Second, disciplinary procedures permit police officials to monitor officers' compliance with departmental procedures. Adherence to departmental procedures assists officers in meeting departmental objectives, and a monitoring system permits managers to identify problem areas in which increased training or direction is necessary. Finally, the third purpose is to clarify rights and ensure due process protection to citizens and officers alike. Heightening officer awareness of the rights afforded them when charged with misconduct increases appreciation of the comparable rights afforded citizens accused of a crime.

In light of these purposes, the objective of this policy is to provide citizens with a fair and effective avenue for redress of their legitimate grievances against law enforcement officers and, by the same token, to protect officers from false charges of misconduct or wrongdoing and provide accused officers with due process safeguards. The agency seeks to maintain its integrity and that of its employees. In so doing, the agency shall not hesitate to impose disciplinary actions on guilty officers, to remove from employment those officers who prove to be unfit for law enforcement work, and to dismiss unjustified allegations against innocent officers.

It is the policy of this agency to accept and investigate all complaints of officer misconduct or wrongdoing from any citizen or agency employee. Following a thorough and impartial examination of available factual information, the officer(s) shall be found innocent or guilty of the allegation.

Guilty officers shall be disciplined according to the degree of misconduct.

The imposition of corrective actions and necessary penalties are among the methods available to achieve agency goals and compliance with agency policies and procedures. Use of this authority is intended to eliminate the particular behavior and to censure the individuals that account for the misconduct. Furthermore, the discipline process shall be used to identify and correct unclear or inappropriate agency procedures, as well as organizational conditions that may contribute to the misconduct, such as poor recruitment and selection procedures or inadequate training and supervision of officers.

This agency is committed to providing law enforcement services that are fair, effective, and impartially applied. In so doing, officers are held to the highest standards of official conduct and are expected to respect the rights of all citizens. Officers' voluntary adherence to these standards, motivated by a moral obligation to perform their job to the best of their ability, is eminently desirable and an ultimate objective of this agency.

If an officer does not adhere to the standards of official conduct, either through deliberate action or negligence, disciplinary action shall be applied in a prompt and certain manner.

Prevention of Misconduct

It is the policy of this agency to emphasize the prevention of misconduct as the primary means of reducing and controlling it. While disciplinary actions are properly imposed on officers who have engaged in wrongdoing, they are of limited utility if they shield organizational conditions which permit the abuses to occur. Too often inadequate training and lack of supervision are factors that contribute to the officers' improper behavior. This agency shall make every effort to eliminate the organizational conditions which may foster, permit, or encourage improper behavior by its employees.

Data Collection and Analysis

Monthly reports shall be prepared by the Internal Affairs Division for submission to the agency's chief executive that summarize the nature and disposition of all misconduct complaints received. Further, notation will be made of age,

sex and racial characteristics of the complainants and the officers, as well as the complainants' residential neighborhoods. Terminated complaints shall be recorded and reasons for the termination explained.

Copies of the report shall be distributed to all command and supervisory personnel, as well as to training commanders. Notations shall be made for corrective actions of any developing patterns of abuse of a similar nature in a particular neighborhood.

An annual report summarizing the types of complaints received and the dispositions of the complaints shall be prepared and made available to members of the public and the press. The names of complainants and accused officers shall not be published in this report.

Code of Conduct

Specific categories of misconduct that are subject to disciplinary action are precisely defined. These include crimes such as bribery or theft, use of excessive force, improper arrest, unlawful entry, unlawful search, and harassment. In addition, complaints of improper demeanor, serious rule infractions such as drunkenness on duty, or minor rule infractions such as untidiness, are subject to disciplinary action.

Penalties

A scale of progressive penalties permitted by law and/or bargaining agreements is used by the agency to punish guilty officers. These are counseling, verbal reprimand, letter of reprimand, loss of vacation time, imposition of extra duty, monetary fine, transfer, suspension without pay, loss of promotion opportunity, demotion, discharge from employment, or criminal prosecution.

The Disciplinary Process: Receipt and Processing of Complaints

Complaints shall be accepted from any source, whether made in person, by mail or over the telephone. Individuals are encouraged to submit their complaints in person in order to obtain as complete a report as soon as possible after the incident. In cases in which the complainant cannot file the report in person, agency personnel may visit the individual at his or her home, place of business or hospital in order to complete the report.

Complaints shall be accepted from anonymous sources, juveniles and persons under arrest in police custody so long as the complaint contains sufficient factual information to warrant investigation. Each complaint shall be investigated to its logical conclusion and the investigation results properly placed into the appropriate category of completed cases.

Any individual who files a complaint shall receive a written brochure or form that explains the disciplinary process in clear and concise language. Individuals who file written complaints or those made over the telephone shall receive a written confirmation of the receipt of their complaint signed by the Internal Affairs Office director, including a unique case reference number and the name of the staff member who will handle their case. The name and office telephone number of an Internal Affairs staff member with whom to discuss the investigation termination decision shall be included on the form. Also, a complaint description form to be reviewed and signed by the complainant and returned to the agency shall be sent to the complainant. Persons who file complaints charging excessive use of force shall be asked to sign a form authorizing release of their relevant medical records to the police agency.

While encouraging the filing of legitimate complaints against officers as a means by which they can be held accountable to the public, the department simultaneously seeks to hold members of the public responsible for the filing of false and malicious allegations against police officers. In cases of this nature, the complainants will be informed that appropriate legal proceedings will be instituted to remedy such action.

Investigation and Adjudication of Complaints

Complaints of harassment, demeanor and all rule infractions shall be forwarded from the Internal Affairs Office to the accused officer's commanding officer, who, in turn, shall require the officer's supervisor to investigate the allegation of misconduct. The supervisor shall interview the complainant, all witnesses and the accused officer, as well as review relevant reports, activity sheets, or dispatcher forms. The supervisor shall then submit a report to the commander summarizing the matter and determining disciplinary action and forward notification of the action through the chain of command to the agency's chief executive for approval. If, however, the commander determines that the required disciplinary action exceeds a verbal reprimand, he or she shall forward the investigation report and his or her recommendations to the director of the Internal Affairs Office for review.

In cases where preliminary investigative data indicate the possibility of a criminal act on the part of an officer, the case shall be referred to the district attorney. This should be



accomplished prior to the lodging of a formal accusation against an officer. In all other cases, after the gathering of preliminary investigation data, the accused officer shall then be notified of the complaint and an appointment scheduled for questioning. The officer shall be entitled to be accompanied by one other person of his or her choosing to attend the questioning session in order to provide counsel and to ensure protection of the officer's civil rights. The questioning shall take place at a time when the officer is on duty or during his or her normal working hours. In extremely serious cases that involve public interest or which may bring the agency into disrepute, the accused officer may be questioned during non-working or non-waking hours.

Conclusions of Fact

The investigator shall consider all relevant documents, testimony and evidence in order to determine what actually happened. He or she shall prepare a summary report that provides a complete account of the situation. Gaps or conflicts in evidence and testimony shall be noted and the investigator shall not draw conclusions of fact from them.

At the end of the report, the investigator shall state a conclusion of fact for each allegation of misconduct from among the following dispositions:

- Proper Conduct: The allegation is true, but the action of the agency or the officer was consistent with departmental policy, and the complainant suffered no harm.
- Improper Conduct: The allegation is true and the action of the agency or the officer was inconsistent with departmental policy, and the complainant suffered harm.
- Policy Failure: The allegation is true, and although the action of the agency or the officer was not inconsistent with departmental policy, the complainant suffered harm.
- Insufficient Evidence: There is insufficient evidence to prove or refute the allegation.
- Unfounded Complaint: Either the allegation is demonstrably false or there is no credible evidence to support it.

In addition to existing appeal procedures, an officer may, within 30 days, file a written response to any adverse comment entered in his or her personnel file. Such written response shall be attached to the document containing the adverse comment.

The following departments' Policy and Procedure Manuals were reviewed for this bulletin:

- Amarillo Police Department
- Arlington Police Department
- Austin Police Department
- Bryan Police Department
- Carrollton Police Department
- Duncanville Police Department
- Dallas County Sheriff's Department
- Eules Police Department
- Fort Worth Police Department
- Lubbock Police Department
- Midland Police Department
- Odessa Police Department
- Orange County Sheriff's Department
- Plano Police Department
- Randall County Sheriff's Department
- Texas Department of Public Safety
- Waco Police Department

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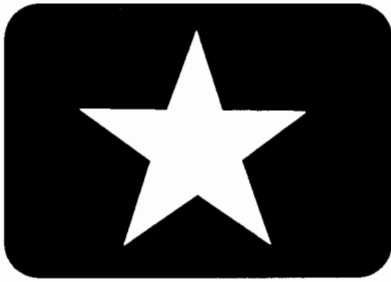
LEMIT staff have contacted agency administrators of 40 Texas police departments employing over 150 sworn personnel, as well as a representative sample of smaller departments, inviting them to participate as survey respondents. We would like to make the TELEMASP program as comprehensive as possible. If your agency wishes to routinely participate in the survey program, please write to:

**Ms. Jamie Tillerson
Police Research Center
College of Criminal Justice
Sam Houston State University
Huntsville, TX 77341-0296**

We will immediately request a copy of your agency's policy/procedure manual and an organizational chart. Therefore, you may wish to include these with your letter.

You will be asked to complete approximately eight surveys annually. Every effort will be made to make each survey as easy to respond to as possible. Surveys are likely to be completed by various personnel in your department. For example, an upcoming survey on DARE programs would be best completed by the person in immediate charge of your DARE program, while a survey on crime analysis would best be completed by that unit. For administrative purposes, we ask that you designate a TELEMASP coordinator for your agency. All correspondence will be sent to that coordinator, who may distribute a survey to the appropriate individual for completion.

We enthusiastically welcome your participation.



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TELEMASP Monthly Bulletins,
ISSN 1075-3702, are produced
under an agreement with the

Police Research Center
Sam Houston State University
Larry T. Hoover, Ph.D., Director
Jamie L. Tillerson, Program Coordinator

For information about TELEMASP
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