

OFFICE OF POLICE ACCOUNTABILITY

I. INTRODUCTION

The City of Boise City Council established the Office of Police Accountability. Civilian Accountability of law enforcement is a critical facet of any effort to strengthen the relationship between police and the community and build public trust while promoting effective policing. Oversight agencies help increase the public's understanding of law enforcement policies, procedures, and operations. The City is committed to civilian police oversight that is proactive, empowered, independent, transparent, and community driven. The Office of Police Accountability investigates complaints against Boise Police Department police officers and police personnel, audits internal affairs investigations, and makes informed policy recommendations related to policing issues of significant public interest.

The Office of Police Accountability is authorized and empowered by Title 2, Chapter 10 of the Boise City Code. The actions of the Director and all employees of the Office of Police Accountability are governed by the policies of the City of Boise. The purpose of this regulation is to describe the processes related to the operations of the Office of Police Accountability.

II. DEFINITIONS

For the purpose of this regulation, the following definitions apply:

- A. "Appeal" shall be defined as an expression of disagreement with any finding or outcome arising from an investigation into a complaint or allegation filed previously with the Boise City Police Department.
- B. "Business day" shall be defined as the days between and including Monday to Friday, excluding Saturday, Sunday, and any day declared an official holiday by the City of Boise.

- C. "Case report" shall be defined as the report generated by the Office of Police Accountability upon review stating whether or not the Director finds that the investigation conducted was complete, thorough, objective, and fair.
- D. "Commendation" shall be defined as the expression of praise, gratitude, or other similar sentiment concerning a specific act or series of actions by one or more police officers and/or police employees.
- E. "Complaint" shall be defined as an allegation that, if found to be true, would be a violation of federal, state, or local law, BPD Policy, or Boise City Policy.
- F. "Confidential information" shall be defined as any and all information obtained by, provided to, and/or stored by the Office of Police Accountability, regardless of the form in which it is obtained and/or stored, that is protected or restricted from disclosure by virtue of Federal law, State statute, City code, City policy, or court order.
- G. "Critical incident" shall be defined to include the following events or incidents in which police officers or police employees are involved as a principal, victim, witness, or custodial employee:
 - 1. Use of deadly force (excluding animals).
 - 2. The use of deadly force where only minor bodily injuries occur.
 - 3. Use of force or any other police or law enforcement action that results in the death of one or more persons or serious bodily injury requiring hospital admission.
 - 4. Vehicle pursuits, roadblocks, or intercepts resulting in the death of one or more persons or serious bodily injury requiring hospital admission.
 - 5. Vehicular collisions resulting in the death of one or more persons or serious bodily injury requiring hospital admission that occurred while a police officer or police employee was operating a city vehicle (either on-duty or off-duty) or a private vehicle while on-duty.
- H. "Disclosure" shall mean any communication or transmission of information, regardless of the form in which the communication or transmission takes place; forms of communication or transmission include, but are not limited to: oral, written, electronic, encoded, internet, email, text message, wireless, telephonic, recorded, audio recording, or video recording.

- I. "Intake" shall be defined as a preliminary investigation to determine whether the allegation is a complaint.
- J. "May" indicates that the specified action is permitted, depending upon sound judgment and documented rationale.
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- K. "Police officer or police employee" shall be defined as Boise Police Department police officers (regardless of rank), employees (whether full-time or part-time), and volunteers.
- L. "Shall" indicates that the specified action is mandatory or required.
- M. "Will" indicates that the specified action is to be taken as conditions permit.
- N. "Written Notice" and "Notice in Writing" shall include, but not be limited to: paper, facsimile transmission, email, as well as any and all other forms of electronic communication.

III. FILING COMPLAINTS, APPEALS, AND COMMENDATIONS

Any person may file a complaint, or commendation with the Office of Police Accountability concerning the operations, actions, or omissions of the Boise Police Department and any Boise City police officer or police employee.

The Director may, on their initiative, file and open a complaint, and/or commendation concerning the operations, actions, or omissions of the Boise Police Department and any Boise City police officer and police employee, provided the Director has knowledge of evidence sufficient to form a reasonable basis for the complaint, , or commendation.

Complaints previously filed with the Boise Police Department will not be accepted, except on appeal as specified below.

Only the person or persons who initially filed a complaint or allegation with the Boise City Police Department shall have the standing to file an appeal with the Office of the Police Accountability.

A. How to File

Complaints, appeals, and commendations may be filed by any means, including, but not limited to the following: in person, in writing, by telephone, by facsimile, by email, or by other electronic means.

B. False Complaints

When the Director determines that the evidence available from the investigation of a complaint or appeal provides probable cause to believe that one or more persons knowingly provided false information concerning a charge or complaint to the Office of Police Accountability in violation of either Idaho Code § 18-5413 or Boise City Code § 6-01-13, the Director may request a review of the evidence by the Boise City Attorney.

C. Additional Allegations Not Made by the Complainant

When, in the course of an investigation or audit, evidence of a serious violation of policy or procedure not previously included in the allegations listed in a complaint or appeal is discovered, the Director may, at his or her discretion file a new complaint detailing the possible violation as an allegation, or refer the matter to the Boise Police Department for disposition.

D. Timeliness Requirements for Filing

Complaints filed more than 90 calendar days after the incident giving rise to the complaint will not be accepted by the Office of Police Accountability, except under one or more of the following conditions:

1. The complaint contains an allegation that, if proven to be true, would be either a criminal act or a serious violation of policy.
2. The complainant provides evidence of involuntary incapacitation or other circumstances that would reasonably have prevented the filing of the complaint during the 90 calendar days following the incident.
3. The Director is the complainant and his or her knowledge of the alleged violation is based on evidence discovered during the investigation or audit of a different allegation. In such cases, the Director shall have ten (10) business days from the date of discovery of the alleged violation in which to file a complaint.

Upon receipt of a notice of final determination from Boise Police Department -Office of Internal Affairs, any person may, within ten business

days of the date of the notice, file an appeal with Office of Police Accountability.

IV. COOPERATION AND TRUTHFULNESS REQUIRED OF CITY EMPLOYEES

A. Cooperation Required

Boise City Code § 2-22-07(A) requires all City employees "as a condition of their employment" to cooperate "fully and truthfully" with an Office of Police Accountability investigation. Before conducting any investigative interviews of City employees, the Director shall give the employee a Memorandum of Administrative Privileges that informs the employee of their obligation to wholly and truthfully answer all questions asked by the investigator as a condition of employment.

City employees compelled to answer questions by the Director related to their employment have the protections set forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967). This protection provides that compelled statements related to an officer or employee's job and job duties have immunity in any subsequent criminal prosecution of the statement maker.

B. Failure to Cooperate and False Statements by Employees.

If the Director determines that the preponderance of the evidence available from the investigation of a complaint, or appeal proves that, in violation of Boise City Code § 2-22-07(A)/ a City employee has either knowingly provided false information to, or failed to cooperate fully with, the Office of Police Accountability, the Director will contact the Chief of Police or appropriate department director and request that the employee be notified of his or her obligation to comply with the provisions of Boise City Code § 2-22-07(A).

If, after being so notified by the Chief of Police or appropriate department director of the obligation to cooperate, a City employee refuses or fails to cooperate fully and truthfully with an investigation being conducted by the Office of Police Accountability, the Director will file with the Chief of Police or appropriate department director a formal complaint of misconduct against that employee.

V. ACCESS TO CITY RECORDS

Boise City Code provides the Office of Police Accountability with, "full, unrestricted and complete access to any and all information, files, evidence or other material which the Director shall deem necessary in the

performance of the duties specified and responsibilities set forth in this chapter./I § 2-22-06(B). As a result, all City employees, volunteers, contractors, and those persons operating on behalf of the City shall fully and without delay comply with all such requests made by the Director or his or her designee.

VI. INVESTIGATION AND COMPLAINTS

Following receipt of an allegation or concern, the Office of Police Accountability may conduct an intake to review readily available City records, along with information provided by the complainant, to classify the matter as a complaint.

A. Complaints

If the Director determines that the allegation rises to the level of a complaint, the Director will forward the complaint to the Boise Police Department's Office of Internal Affairs for investigation. Once a finding is made by the Department, the finding will be immediately communicated to the Office of Police Accountability. The Office of Police Accountability will notify the complainant of the finding.

B. Appeals

A complainant may file an appeal of the Office of Internal Affairs' investigation regardless of whether the complainant initially filed the complaint with the Office of Internal Affairs or with the Office of Police Accountability. A complainant has ten (10) days from the date of the notice of the finding to file an appeal with the Office of Police Accountability. The complaint may request an appeal in person, in writing, by telephone, facsimile, email, or other electronic means. Upon receipt of an appeal, the Office of Police Accountability will conduct a review to determine whether the investigation conducted by the Office of Internal Affairs was complete, thorough, objective, and fair. The Office of Police Accountability may, if necessary, conduct additional investigation.

C. Office of Police Accountability Process

To ensure consistency, all verified complaints received by the Office of Police Accountability will be forwarded to the Office of Internal Affairs for investigation.

D. EEOC or Title VI

Allegations of a violation of the City's Equal Employment Opportunity or Title VI policy and regulation will be forwarded to the Department of Human Resources for processing and resolution.

E. Alleged Criminal Acts by Police Officers and Police Employees

If in the course of any investigation, the Director determines that there is a reasonable basis to believe that a City employee may have committed a criminal act, whether or not the alleged criminal act was included as an allegation that triggered the investigation, the Director shall consult with assigned legal counsel and determine whether the matter should be referred to the appropriate prosecuting attorney for consideration of criminal charges or criminal investigation.

When the Director refers an investigation to a prosecuting attorney for consideration of criminal charges, the Director shall suspend the investigation until such time as the Office of Police Accountability is notified of a charging decision by the prosecuting attorney. During the time in which an investigation is suspended, police officers and police employees shall not be interviewed by the Office of Police Accountability in connection with that specific complaint investigation.

When the Director refers an investigation to a prosecuting attorney for consideration of criminal charges, any timeliness requirements specified for the investigation of complaints and appeals shall be tolled until such time as the Office of Police Accountability is notified of a charging decision by the prosecuting attorney.

F. Investigations

Reasonable efforts will be made to locate and interview persons thought to have information material to the investigation.

All investigative interviews shall be audio recorded, including intake interviews and those conducted over the telephone. Notice of the recording will be given at the beginning of each interview.

Reasonable efforts will be made to conduct interviews at a time and place convenient for the person being interviewed, provided that such accommodation does not interfere with the timeliness, confidentiality, or integrity of the investigation. Unless the payment of overtime has been authorized by the appropriate department head, interviews of police officers and police employee will occur during the employee's regularly scheduled work hours.

G. Timeliness of Completion

Investigations will be completed in a timely manner. Specific timeliness targets shall be set by the Director in consultation with the Mayor. Actual performance relative to the specified timeliness targets shall be included in the Mayor's annual performance evaluation of the Director.

H. Representation During Investigative Interviews

Persons being interviewed, including but not limited to police officers and police employees, will be permitted to have a representative or attorney of their choice with them during any interview, provided that the representative or attorney does not interfere with or unreasonably delay the interview. Persons believed to have been involved in or a witness to the incident giving rise to the complaint or appeal may not act as a representative for another person involved in the incident during an investigative interview.

I. Standard of Proof for Complaints and Appeals

Findings of fact and policy conclusions shall be based on the preponderance of the evidence available through the investigation.

J. Required Notices for Complaints and Appeals

The following notices shall be given to any person who files a complaint or appeals with the Office of Police Accountability:

1. Notification (orally, by phone, electronically, or in writing) at the time of intake that knowingly providing false information to the Office of Police Accountability is a violation of law and may result in a misdemeanor criminal charge.
2. Notification (orally, by phone, electronically, or in writing) of the acceptance of the complaint or appeal.
3. Contact (orally, by phone, electronically, or in writing) by the assigned investigator at least every thirty (30) calendar days for as long as a complaint or appeal remains under investigation to inform the person of the status of the complaint or appeal.
4. Notification in writing as to any finding or other outcome.

K. Closing of Complaints and Appeals

Complaints and appeals will be considered to be closed on the day that the Office of Police Accountability transmits the Case Report of that complaint or appeal to the Chief of Police.

VII. INVESTIGATION OF CRITICAL INCIDENTS

A. Investigation

If a BPD officer or employee is involved in a critical incident as a principal, victim, witness, or custodial officer, BPD shall immediately notify the Office of Police Accountability. The Director may provide on-scene monitoring of critical incidents and may act as a real-time observer to any criminal, administrative, or civil investigation conducted by or on behalf of BPD (e.g., the Critical Incident Task Force). The Director shall be given full access to observe interviews or any other aspects of the investigation. If the Director believes additional investigation is necessary, the Director may conduct additional investigation or employ an outside investigator who will perform investigatory functions at the discretion of the Director.

The Office of Police Accountability will not interview or question any police officers or police employees known to have witnessed or been directly involved in the critical incident until the completion of any criminal investigation into the critical incident.

The Director may, in the interest of justice, suspend a critical incident investigation until the adjudication of any criminal prosecution arising from the critical incident. During the period of suspension, the timeliness requirements specified above for critical incident investigations will be tolled.

All critical incident investigative interviews shall be audio recorded, including those conducted over the telephone. Notice of such recording will be given at the beginning of each interview.

Reasonable efforts will be made to conduct interviews at a time and place convenient for the person being interviewed, provided that such accommodation does not interfere with the timeliness, confidentiality or integrity of the investigation. Unless otherwise authorized by the Chief of Police, interviews of police officers and police employees will take place during the employee's regularly scheduled work hours.

B. Timeliness of Completion

Critical incident investigations will be completed in a timely manner. Specific timeliness targets shall be set by the Director in consultation with the Mayor. Actual performance relative to the specified timeliness targets shall be included in the Mayor's annual performance evaluation of the Director.

C. Representation During Investigative Interviews

Persons being interviewed, including but not limited to police officers and police employees, may have a representative or attorney of their choice with them during any interview, provided that the representative or attorney does not interfere with or delay the interview. Persons believed to have been involved in or a witness to the incident giving rise to the critical incident may not act as a representative person during an investigative interview.

D. Alleged Criminal Acts by Police Officers and Police Employees

If, in the course of investigating a critical incident, the Director discovers evidence not previously reported in a criminal investigation and, as a result, determines that there is a reasonable basis to believe that a City employee may have committed a criminal act, the Director shall consult with assigned legal counsel and determine whether or not the matter should be referred to the appropriate prosecuting attorney for consideration of criminal charges or criminal investigation.

When the Director refers a critical incident to a prosecuting attorney for consideration of criminal charges, the Director shall suspend the investigation of the critical incident until such time as the Office of Police Accountability is notified of a charging decision by the prosecuting attorney. During the time in which a critical incident investigation is suspended, police officers and police employees shall not be interviewed by the Office of Police Accountability.

When the Director refers a critical incident to a prosecuting attorney for consideration of criminal charges, any timeliness requirements specified for the investigation of critical incidents shall be tolled until the Office of Police Accountability is notified of a charging decision by the prosecuting attorney.

E. Required Notice

A written notice of investigation shall be sent by the Office of Police Accountability within five (5) business days from the date of the incident or

the day on which the identity is known of the involved police officers or police employees, whichever is later. Based on what is known at that time, this notice will include enough information about the incident and the specific act(s) or omission(s) under review so that the police officers or police employees can adequately prepare for any subsequent interview or requests for information from the Office of Police Accountability.

Notice of scheduled interviews shall be provided (written or electronic) as far in advance of the interview as is reasonably possible. A final case report shall be sent to the Chief of Police.

VIII. COMMENDATIONS

Within five (5) business days of receiving a commendation, the Office of Police Accountability shall send a written summary of the commendation to those police officers and police employees identified by the person filing the commendation. A copy of the written summary of commendation shall be sent to the Chief of Police.

IX. AUDIT OF INTERNAL INVESTIGATIONS

The Office of Police Accountability shall regularly audit the internal investigations conducted by the Boise Police Department. The purpose of these audits will be to determine if the internal investigations are complete, thorough, objective, and fair.

X. POLICY, PROCEDURE, AND TRAINING RECOMMENDATIONS

The Office of Police Accountability shall develop specific recommendations as to the policies, procedures, practices, and training of police officers and police employees. These recommendations may arise from the investigation or audit of complaints, appeals, or critical incidents by the Office of Police Accountability. The Director may also develop such recommendations at the request of the Mayor, City Council, or Chief of Police.

Only the Director has the authority, on behalf of the Office of Police Accountability, to make recommendations concerning police or law enforcement policy, procedure, or training.

The Office of Police Accountability will provide the Chief of Police with an advance copy of any policy, procedure, or training recommendation at least five (5) business days before any public release of such recommendations.

The Office of Police Accountability will give the Chief of Police the opportunity, during the five (5) business day review period, to provide a written response to any policy, procedure, or training recommendation for inclusion with the Director's public release of any such recommendation.

XI. CONFIDENTIAL INFORMATION

The Director and all members of the Office of Police Accountability staff (employees, contractors, and volunteers) shall obey all local, state, and federal laws regarding confidentiality, and shall make every reasonable effort to safeguard the privacy interests of others and the confidentiality of information provided to the Office of Police Accountability (BCC § 2-10-10 Confidentiality of Records and Information).

The Office of Police Accountability will only release confidential information, materials, and reports related to complaints, appeals, and critical incidents to the following persons or under the following circumstances:

1. the Chief of Police,
2. the Mayor of Boise,
3. the Boise City Council sitting in executive session,
4. upon receipt of a valid order from a court with jurisdiction,
5. when there is a credible threat of imminent bodily harm to one or more persons, and it is reasonable to conclude that disclosure is the only reasonable way to prevent such harm from occurring, or
6. in cases of suspected or reported child abuse as required under Idaho State statute,
7. as otherwise required by law, or
8. with the express, written permission of the person who provided the confidential information.

Upon receipt of a subpoena ordering the Director or any person acting under the authority of the Director, to give testimony and/or to produce any record or other item in the custody of the Director, the Director will consult with assigned legal counsel. Reasonable efforts will be made to protect the confidentiality of privileged or otherwise protected information while still complying with the requirements of the subpoena.

XII. RELEASE OF INFORMATION TO THE PUBLIC

Only the Director has the authority, on behalf of the Office of Police Accountability, to release information to the public concerning a specific

complaint, appeal, commendation, critical incident, audit of internal investigation, or recommendation.

A. Semi-annual Report of Operations

The Director shall file semi-annual reports of operations with the City Clerk for transmittal to the Mayor and City Council.

B. Summary Reports of Investigation

The Office of Police Accountability may release to the public a summary report for any complaint, appeal, audit, or critical incident investigated by the Office of Police Accountability. Summary reports will include a description of the incident under investigation, the allegations made or actions under review, the steps taken in the course of the investigation, the findings of fact resulting from the investigation, the conclusions of policy issued by the Director and an explanation of the rationale behind them, and any recommendations for change to policy, procedure or training made by the Director.

Summary reports of complaint, appeal, or critical incident investigations shall not include specific privileged or confidential information, nor shall such reports contain the names of any person, other than those of the Director and the employees of the Office of Police Accountability. Reasonable efforts will be made to exclude from public reports any information that would lead to the identification of individuals anonymously referred to in such reports by those without independent knowledge about the incident or the people involved. Prior release of names or other identifying information by third parties shall not foreclose or otherwise restrict the ability of the Office of Police Accountability to release to the public a summary report of a complaint, appeal, or critical incident.

C. Police Department Opportunity to Review a Public Report and Provide a Written Response

For complaints and appeals in which no recommendations for change to policy, procedure, or training are made by the Director, the Office of Police Accountability shall provide the Chief of Police with a copy of a public summary report of a complaint or appeal investigation at least 48 hours before it is released to the public.

When recommendations for change to policy, procedure, or training are made by the Director, the Office of Police Accountability shall provide the Chief of Police with a copy of a public summary report of a complaint or

appeal investigation at least five (5) business days before it is released to the public.

In the case of a critical incident investigation, regardless of whether or not recommendations for change to policy, procedure, or training are made by the Director, the Office of Police Accountability shall provide the Chief of Police with a copy of a public summary report of a critical incident investigation at least five (5) business days before it is released to the public.

Along with its own public summary report of a complaint, appeal, or critical incident investigation, the Office of Police Accountability will publish any written response provided to it by the Chief of Police, provided that said written response is provided to the Office of Police Accountability in a timely manner.

D. Requests to Examine or Copy a Public Record

Public records requests filed with the Office of Police Accountability shall be processed promptly and in accordance with Boise City policy. Within the requirements and limits set by local, state, and federal laws, every effort will be made to comply as fully as possible with public records requests. Review by the City Attorney's Office of all such public records requests is required, except in the case of previously released public reports.

XIII. LEGAL SERVICES FOR THE OFFICE OF POLICE ACCOUNTABILITY

In order to maintain the independence of the Office of Police Accountability, an outside attorney has been retained to provide any required legal advice. However, the City Attorney's Office will retain review of any public records requests received by the Office of Police Accountability to ensure releases are consistent with City policy.

XIV. COMMUNITY OUTREACH

The Director shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with the citizens of Boise City. In completing this task, the Director may use any media, forums, strategies, and venues he or she deems appropriate and efficient to inform members of the public and to encourage them to communicate with the Director.