

CHAPTER10
MISCELLANEOUS ISSUES
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CHAPTER 10

MISCELLANEOUS ISSUES

1. AMENDING COMPLAINTS.

a. General. Due to new evidence or allegations, it may be necessary on occasion to amend complaint documentation. Examples of this include changing the finding for an allegation, or the addition or deletion of an employee to the complaint. Depending on the complaint's current status, the following procedures apply:

b. Prior to Completion. Complaint investigations may be amended directly by the investigating command and/or reviewing/approval authority at any time prior to discussion and review with the employee. The investigating command shall ensure that all changes made to the original investigation file are also added to **all** existing copies of the complaint.

c. Completed Investigations. To amend a complaint that has already been reviewed and signed by the employee, the procedures specified below apply. A sample Amended Complaint of this type has been provided as Annex K.

(1) The original investigation file shall not be altered. Any requisite changes shall be made by memorandum, referencing what specifically is being changed. The reason for the complaint being amended shall also be included, as well as the original complaint control number.

(2) A new CHP 240, *Complaint Investigation* face page, shall be prepared in full, with the Amended box marked and all information included as appropriate.

(3) The amended CHP 240, along with any memorandums or other documentation, shall be processed as if it were a new complaint. This includes completing the Employee Discussion and Review section.

(4) Additional correspondence to the complainant is not required unless a finding has been changed in a substantive manner. That is, additional correspondence would be required if a finding was being changed from Undetermined / No Finding or Sustained to Exonerated, but not from Sustained to Unintentional Error.

(5) The investigating command shall ensure that the amendment is attached to all existing copies of the original complaint file.

2. PROSECUTION FOR FILING A FALSE COMPLAINT.

a. Penal Code. Penal Code §148:6 (P.C.) makes it a misdemeanor to knowingly file a false complaint against a peace officer. If an investigator is satisfied that a complainant has filed a complaint knowing that it was false or that it was filed with malicious intent, he/she may recommend a criminal complaint be filed with the local district attorney charging a violation of §148.6 P.C. A CHP 216, *Arrest-Investigation Report*, shall be used for this purpose, and shall be completed in accordance with General Order 100.39. Uniformed members shall not physically arrest persons suspected of violating §148.6 P.C.

b. Requirements. The option to file charges should be used with discretion, and then only when all of the following conditions have been met:

(1) The complainant must have been provided a CHP 240B and afforded an opportunity to review and sign it in accordance with this manual.

(2) A citizens' complaint investigation must have been completed and documented in accordance with this manual.

(3) The investigation has been approved at the appropriate level, and the employee discussion and review has been completed.

(4) All of the elements of §148.6 P.C. are present, and these elements are clearly supported in the investigation documentation.

(5) The employee completing the CHP 216 shall not be a subject of any other pending or completed investigations involving the same complainant for which prosecution is being sought.

(6) The approval of the Area commander or his/her alternate shall be obtained prior to requesting a criminal complaint. Commanders should consider meeting with or contacting their local district attorney's office to obtain filing criteria specific to their command.

3. EMPLOYEE FILING OF CIVIL CLAIMS.

a. Civil Code. Pursuant to California Civil Code §47.5 (C.C.), peace officers may initiate a civil action against a complainant for knowingly filing a false complaint. Such action, if taken, is solely the responsibility of the involved employee. The Department neither encourages nor discourages employees from pursuing any civil remedies against a complainant.

b. Requirements. Employees electing to file claims under §47.5 C.C. shall comply with the following:

(1) The employee shall ensure that all communications with the complainant do not portray the employee as acting in any official capacity or acting on behalf of the Department in the matter.

(2) No state or Department resources are to be used in preparing, adjudicating or administering such a case. This specifically includes using departmental stationary, postal services, or having any mail pertaining to the case sent to a Department address.

(3) Employees should be aware that a discovery motion must be filed pursuant to California Evidence Code §1043 before complaint documentation obtained from the Department may be used in civil litigation. Failure to do so may compromise the confidentiality of such documentation.

4. INFORMATION FILE.

a. Purpose. To maintain the integrity of the Department's complaint process and to prevent its use as a means of harassing employees, the Department monitors complainant patterns. The Information File is a catalog of complainants who have demonstrated a propensity towards the filing of frivolous, spurious or specious complaints. Each Information File entry includes specific examples of the abuse of the complaint process.

b. Process. When it becomes apparent a citizen is attempting to misuse the complaint process, commanders may request the complainant be included in the Information File. The following procedure shall be used:

(1) Commander shall prepare a memorandum requesting the entry of the complainant in the Information File. The memorandum should include specific examples of previous questionable complaint activity and what investigative steps the Department has taken in response to the complaints. Also include relevant complaint information from allied agencies, if known.

(2) The memorandum shall be routed through channels to the Bureau of Internal Affairs (BIA).

(3) The Bureau of Internal Affairs will review the memorandum for approval. Normally, a single instance of even the most irrational type of complaint is not sufficient to justify inclusion in the Information File. Rather, the Department is seeking to identify complainants who chronically file frivolous, spurious or

specious complaints. A memorandum will be forwarded to the requester advising of the action taken.

c. Usage. Commanders and/or investigators are encouraged to contact BIA on particular cases to determine if a complainant is currently in the Information File. The mere fact a complainant is in the Information File does not relieve the commander from the responsibility of adequately investigating all allegations of a complaint. However, the fact that a complainant is in the Information File should be considered a significant indicator that a given complaint may be frivolous and should therefore be documented accordingly.

5. COMPLAINT DATABASE.

a. Purpose. The Bureau of Internal Affairs maintains a computer database of complaint-related information. Data culled from all citizens' complaint investigations is entered into the database for later retrieval and analysis. As with the actual investigation files, complaints are expunged from the database after five years, with the exception of generic complaint and allegation information maintained for statistical purposes.

b. Field Usage. Commanders and investigators are encouraged to contact BIA for specific information regarding a complaint or a complainant. The database can also provide data regarding an Area's complaint trends or employee histories.

c. Employee Trend Analysis. The Bureau of Internal Affairs is responsible for monitoring complaint trends and patterns. When an employee receives a specific number of complaints within a certain time period, as determined by the Commissioner, Internal Affairs will develop an "Employee Trend Analysis." The employee's Division commander will be notified via memorandum of this possible adverse complaint trend. The Division commander, in conjunction with the employee's immediate commander, shall review the employee's complaint trend and performance history to identify any behavioral trends and, if needed, develop an appropriate corrective action plan.

6. OUTSIDE AGENCY INVESTIGATIONS.

a. Other Law Enforcement Agency Investigations. Allied law enforcement agencies may at times receive citizens' complaints of incidents that involve, or were witnessed by, Department employees. Whenever an employee of this Department learns that another agency is conducting an investigation involving CHP personnel, he/she shall immediately notify his/her commander who will in turn notify BIA through appropriate channels. When warranted, this Department will conduct a

separate internal investigation in compliance with this manual and/or HPM 10.2, *Internal Investigations*.

b. Civil Rights Investigations. Civil rights violations are identified in federal statutes and are criminal in nature. Investigations of such allegations are normally conducted by the Federal Bureau of Investigation, United States Department of Justice, or the California Department of Justice. When an employee of this Department has been requested to be interviewed by investigators pursuant to a civil rights investigation, the following guidelines apply:

(1) The decision to consent to an interview with an outside investigator shall be at the sole discretion of the employee.

(2) If such an interview is conducted on state time, a departmental supervisor shall be present and shall tape record any interview.

c. Grand Juries. Any request for complaint records or interviews with departmental employees shall be coordinated with BIA and the Legal Coordination Unit. Refer to Chapter 9 for guidance on release of citizens' complaint investigation files.

7. APPEAL OF COMPLAINT FINDINGS.

a. General. When a complainant, after having been notified of the findings of a complaint investigation, formally expresses dissatisfaction with the methodology or conclusions of the investigation, the succeeding level of command shall conduct a separate complaint review. This review shall include a critical evaluation of the investigation's comprehensiveness, thoroughness, and the justifiability of the investigator's findings. Additional investigation may be required in cases where the reviewer deems it necessary. Any modification or additions to the investigation file shall be completed in accordance with this manual.

b. Division Review. A Division level review shall be conducted when a complainant is not satisfied with an investigation conducted by an Area command. A Division review is normally initiated by notification from BIA through Program Management and Professional Standards Division, but may also originate directly at the field Division level. In most cases, it will be necessary to obtain a copy of the investigation file from the original investigating command. At the conclusion of the review, closing correspondence discussing the results of the review shall be sent to the complainant. Such correspondence is normally signed by the Division commander, but this is not a requirement. Refer to Annex D for a sample of such correspondence. If the request to initiate the review originated in BIA, then a courtesy copy of the closing letter to the complainant(s) shall also be forwarded to BIA (no other notification is necessary).

c. BIA Review. A BIA level review shall be conducted when a complainant is not satisfied with a Division complaint review or with the findings of a complaint investigation originally completed by a Division. BIA reviews will normally be • conducted in a manner similar to Division reviews. Closing correspondence to the complainant after a BIA review shall be considered the Department's final response in the matter.

8. AVAILABLY OF MANUAL. In accordance with§ 832.5 P.C., citizens may purchase a copy of this manual through the Department's Publications Unit.