

OFFICE OF THE COMMUNITY OMBUDSMAN
POLICIES AND PROCEDURES



JANUARY 1, 2001

**OFFICE OF THE COMMUNITY OMBUDSMAN
POLICIES AND PROCEDURES**

Contents

CHAPTER 1

Authority, Mission & Philosophy

CHAPTER 2

Citizen Complaint Procedures & Investigation

CHAPTER 3

Review of Internal Investigations

CHAPTER 4

Citizen Appeals of Internal Investigations

CHAPTER 5

Critical Incidents

CHAPTER 6

False Reports

CHAPTER 7

Criminal Investigations

CHAPTER 8

Outside Legal Counsel



CHAPTER 1

AUTHORITY, MISSION & PHILOSOPHY

1.00 AUTHORITY, MISSION & PHILOSOPHY

1.01 Authority for the Office of the Community Ombudsman

- a. On July 20, 1999, the Boise City Council enacted, by a unanimous vote, City ordinance number 5930. This ordinance added Title 2, Chapter 22, to the Boise City code to establish the Office of the Community Ombudsman specifying duties and responsibilities, requiring confidentiality of records, and authorizing mediation, recommendations, community outreach, and reporting.
- b. The scope of the Community Ombudsman's authority, as specified in the ordinance, extends to any and all law enforcement and police activities or personnel operating under authority of the City of Boise City.
- c. A complete copy of City Ordinance number 5930 may be viewed at the Office of the Community Ombudsman during regular business hours.
- d. A complete copy of City Ordinance number 5930 may be obtained from the Boise City Clerk upon payment of the normal fees required for such public documents.
- e. A complete copy of City Ordinance number 5930 is also available for public access on the internet site maintained by the Boise City Clerk.

1.02 Mission of the Office of the Community Ombudsman

The Office of the Community Ombudsman exists to promote public confidence in the professionalism and accountability of Boise City's police and law enforcement employees through unbiased investigation of citizen complaints, independent review of police actions, thoughtful policy recommendations, and on-going public outreach.

1.03 Operating Philosophy of the Office of the Community Ombudsman

The Ombudsman's operating philosophy consists of the following guiding principles under which we strive to achieve our mission.

- a. We believe in providing equal, fair, and impartial access to the services of the Office of the Community Ombudsman; without regard to age, race, gender, creed, color, nationality, or station in life.

- b. We believe in treating all individuals, regardless of their attitude or demeanor, with the same courtesy, tolerance, sensitivity, and dignity we would expect if placed in a similar situation.
- c. We believe in providing quality, timely, objective, and responsive service to those persons who request the assistance of the Community Ombudsman.
- d. We believe in the empowerment of people to solve problems, provide service, and satisfy the needs of the community, coupled with accountability and responsibility for their conduct.



CHAPTER 2

CITIZEN COMPLAINT PROCEDURES & INVESTIGATIONS

2.00 CITIZEN COMPLAINT PROCEDURES & INVESTIGATIONS

It is the policy of the Office of the Community Ombudsman to establish fair and equitable procedures governing the reception, investigation, and disposition of citizen complaints.

2.01 Philosophy of Complaint Taking

Citizens often question the actions of Boise City Police officers/employees and other law enforcement personnel and wish to express their views. It is the responsibility of the Community Ombudsman, and the staff of the Office of the Community Ombudsman, to answer questions from citizens and attempt to satisfy their concerns. If they wish, citizens shall have the right to file a complaint with the Office of the Community Ombudsman.

2.02 Definition of Complaint

For purposes of this policy, “complaint” shall be defined as an allegation received from a citizen alleging conduct by a Boise City Police or law enforcement employee which, if sustained, would constitute a violation of law or of the policies and/or procedures of the City of Boise or any of its departments.

2.03 Complaint Against a Police Officer or Law Enforcement Employee

- a. Citizens who file complaints shall be advised of the complaint process in writing or by telephone at the time that such a request for information is made.
- b. Complaints not initiated by the aggrieved party will be taken. The investigator, however, will first contact the alleged aggrieved party to determine his or her desire for the complaint to proceed. While lack of participation by the allegedly aggrieved party may seriously hamper an investigation, it shall not preclude the investigator from continuing the investigation based on information received from the third party and/or other sources.
- c. Complaints from parents or guardians made on behalf of an allegedly aggrieved minor, or a person deemed to be incompetent, shall be investigated as though the complaint were made directly by the aggrieved party.
- d. The Community Ombudsman may also initiate an investigation based on information provided by a third party, should the ombudsman believe such

investigation is in the best interests of the City.

- e. Questions of a general nature concerning police procedures or quality control are not considered to be complaints and shall be handled as a “Citizen Inquiry”.
- f. Complaints which involve the actions of someone other than a Boise City Police or law enforcement employee shall not be taken by the Office of the Community Ombudsman. In such cases, every reasonable effort shall be made by the Office of the Community Ombudsman to refer the person with the complaint to the appropriate agency, person, or organization.

2.04 Recency of Occurrence

- a. In order to ensure as complete an investigation as possible, the Office of the Community Ombudsman will only accept complaints received within 90 days of the date of the incident giving rise to the complaint. An exception may be granted by the Community Ombudsman in cases where the complainant was unable to make the complaint within the 90 day period due to an involuntary incapacity (e.g., hospitalization, incarceration, etc.).
- b. An exception may be granted by the Community Ombudsman in cases where the initial evidence presented constitutes a violation so severe that criminal charges, termination, or serious disciplinary action could result if the allegation were to be sustained.

2.05 Classification of Complaints

Complaints shall be classified by the Office of the Community Ombudsman according to the seriousness of the alleged offense and based solely on the alleged violation. The guidelines for classification shall be as follows:

a. Class I

Class I complaints are complaints which, if sustained, constitute a violation greater than minor demeanor or selective enforcement issues and could result in criminal charges and/or discipline up to and including termination. The following are required in the investigation of a Class I complaint:

- (1) A full investigation is required. The face sheet is used to document the beginning of the investigation and the allegations.

- (2) Review, by the Boise City Attorney or designee, due to potential civil and/or criminal liability.
- (3) Written notification to the involved officer/employee against whom the allegation has been made and to either the Office of Internal Affairs of the Boise Police Department, the Manager of the Airport Peace Officers Division, or the appropriate Department Head. Such notifications shall be sent by the Office of the Community Ombudsman within five (5) working days from the date on which the complaint was first filed with the Office of the Community Ombudsman. Written notification to any or all of the above parties may be delayed for a reasonable amount of time if the Community Ombudsman determines that such notification is likely to result in the destruction, removal, alteration, or any other tampering of evidence, statements, and/or witnesses.
- (4) Taping of all interviews with involved party (or parties) with direct knowledge bearing on the allegations. Taping of interviews with individuals contacted merely to provide background information and who have no direct knowledge of the events of the allegation is permissible but not required.
- (5) Officer(s)/employees shall be advised of administrative privileges under *Garrity v. New Jersey* (385 US 493) using the Administrative Privileges form prior to interview.
- (6) Managed and tracked with assigned control number.
- (7) The complainant should be asked to complete a signed, sworn statement. A complaint will not be rejected because of the refusal of a complainant to give a sworn statement, however this factor may be considered in the overall investigation of the complaint.
- (8) A written notice from the Community Ombudsman to the complainant notifying him/her of the outcome of the investigation and any finding(s) by the Community Ombudsman. Such notice shall be sent within five (5) working days of either the closing of an investigation or the issuance of any finding(s), whichever is later.
- (9) Written notices from the Community Ombudsman to the involved officer/employee and to either the Office of Internal Affairs of the Boise Police Department, the Manager of the Airport Peace Officers Division, or

the appropriate Department Head notifying them of the outcome of the investigation and any finding(s) by the Community Ombudsman. Such notice shall be sent within five (5) working days of either the closing of an investigation or the issuance of any finding(s), whichever is later.

- (10) A written notice from the Community Ombudsman to the complainant notifying him/her of the final disposition of the case by the Chief of Police, Manager of the Airport Peace Officers Division, or the appropriate Department Head. Such notice shall be sent within five (5) working days of receipt of notification from the Chief of Police by the Community Ombudsman.

b. Class II

Class II complaints include offenses which are relatively minor in nature, such as general demeanor without the use of force and selective enforcement complaints.

- (1) At the discretion of the Community Ombudsman, and if the complainant agrees, a Class II complaint may be referred for investigation at the supervisory level of the involved department. If such a referral is made, the following shall be done:
 - (a) The first line supervisor, of the primary officer/employee involved, shall conduct an investigation sufficient to determine the merits of the complaint. The face sheet is used to document the beginning of the investigation and the allegations.
 - (b) Interviews of the officer(s)/employee(s) will be informal and normally not taped. If the employee insists on formality, the employee shall be advised of his/her administrative privileges under *Garrity v. New Jersey* (385 US 493), the Administrative Privileges form shall be used, and the interview shall be recorded following the guidelines in this section.
 - (c) The supervisor shall contact the complainant directly, obtain a statement and answer any questions and/or concerns the complainant may have.
 - (d) The supervisor shall submit to the Office of the Community Ombudsman a brief written summary of the investigation and his/her recommended finding(s) based on the evidence.

- (e) Once the supervisor submits his/her summary to the Office of the Community Ombudsman, the Community Ombudsman shall contact the complainant directly to determine whether or not the complainant was satisfied with his/her contact with the supervisor.
 - (f) Based on the investigative summary and recommended finding(s) submitted by the supervisor, the Community Ombudsman may either issue a finding on the complaint or request/conduct further investigation until a finding can be reached.
- (2) If either the Community Ombudsman or the complainant do not agree to a referral of the case to the supervisory level for investigation, then the following are required for Class II complaints:
- (a) An investigation by the Office of the Community Ombudsman shall be conducted. The face sheet is used to document the beginning of the investigation and the allegations.
 - (b) Legal review is optional depending on circumstances.
 - (c) Interviews are informal and normally not taped. If the employee insists on formality, the employee shall be advised of his/her administrative privileges under *Garrity v. New Jersey* (385 US 493), the Administrative Privileges form shall be used, and the interview shall be recorded following the guidelines in this section.
- (3) Regardless of whether or not the complaint is investigated at the supervisory level, the following shall be done for all Class II complaints:
- (a) Written notification to the involved officer/employee and to either the Office of Internal Affairs of the Boise Police Department, the Manager of the Airport Peace Officers Division, or the appropriate Department Head against whom the allegation has been made. Such notifications shall be sent by the Office of the Community Ombudsman within five (5) working days from the date on which the complaint was first filed with the Office of the Community Ombudsman. Written notification to any or all of the above parties may be delayed for a reasonable amount of time if the Community Ombudsman determines that such notification is likely to result in the destruction, removal, alteration, or any other tampering of evidence, statements, and/or witnesses.

- (b) Managed and tracked with assigned control number.
- (c) A written notice from the Community Ombudsman to the complainant notifying him/her of the outcome of the investigation and any finding(s) by the Community Ombudsman. Such notice shall be sent within five (5) working days of either the closing of an investigation or the issuance of any finding(s), whichever is later.
- (d) Written notices from the Community Ombudsman to the involved officer/employee and to either the Office of Internal Affairs of the Boise Police Department, the Manager of Airport Peace Officers Division, or the appropriate Department Head notifying them of the outcome of the investigation and any finding(s) by the Community Ombudsman. Such notice shall be sent within five (5) working days of either the closing of an investigation or the issuance of any finding(s), whichever is later.
- (e) A written response from the Community Ombudsman to the complainant notifying him/her of the final disposition of the case by the Chief of Police, the Manager of the Airport Peace Officers Division, or the appropriate Department Head. Such notice shall be sent within five (5) working days of receipt of notification from the Chief of Police by the Community Ombudsman.

c. Citizen Inquiry

Citizen Inquiries are not complaints, per se, but involve questions of a general nature regarding department policy and procedure or law. No misconduct is alleged.

- (1) The Office of the Community Ombudsman will make every attempt to answer or resolve Citizen Inquiries.
- (2) In those instances in which the Office of the Community Ombudsman is unable to answer or resolve a Citizen Inquiry, the citizen may, as a last resort, be referred to another department or agency.
- (3) No formal investigation or report is required for a Citizen Inquiry, unless violations of policy and/or law are uncovered. In such a case, the Office of the Community Ombudsman shall initiate an investigation following the

- mandates of this policy.
- (4) All Citizen Inquiries shall be documented and tracked for statistical and control purposes, regardless of their outcome.
- (5) The Office of the Community Ombudsman shall provide the appropriate Department Head or designee with general information about any Citizen Inquiries received.

2.06 Investigative Responsibility and Case Management

The Community Ombudsman has primary responsibility for the investigation and case management of all complaints filed with the Office of the Community Ombudsman.

- a. Investigations, as determined by the Community Ombudsman, may be performed by:
 - (1) The Office of the Community Ombudsman.
 - (2) The Office of Internal Affairs of the Boise Police Department or any Boise Police Detective or Supervisor acting on behalf of the Office of Internal Affairs.
 - (3) The Manager of the Boise Airport Peace Officers Division.
 - (4) Another law enforcement or prosecutorial agency.
- b. In determining the most appropriate assignment of a complaint for investigation, the Community Ombudsman will consider the following factors:
 - (1) The wishes of the complainant, particularly any expressed fears or anxiety about interacting with the police during the investigation.
 - (2) Current case loads and expected turn around times.
 - (3) The seriousness of the alleged offense(s), the complexity of the required investigation, and the possibility of any criminal charges resulting from an investigation.
 - (4) Potential or existing conflicts of interest.
- c. Investigation classifications may not be downgraded except with the prior

authorization of the Community Ombudsman.

- d. The Office of the Community Ombudsman shall retain a master file of all investigations resulting from complaints filed with the Office of the Community Ombudsman.

2.07 Investigation Guidelines

When any officer/employee becomes the subject of an investigation as a result of a complaint filed with the Office of the Community Ombudsman, the following guidelines will be adhered to:

- a. In those cases where the Community Ombudsman determines that there is credible evidence to suggest that any of the involved officer(s)/employee(s) may have committed a criminal offense, the Office of the Community Ombudsman and any investigator working on its behalf shall not interview or question in any way the involved officer(s)/employee(s) until either of the following conditions have been met:
 - (1) A criminal investigation has been conducted, completed, and turned over to the appropriate prosecutorial authority, or
 - (2) The Boise City Attorney determines that no criminal investigation needs to be conducted.
- b. Unless the seriousness of the investigation requires otherwise, any interviews should be conducted at a reasonable hour, preferably when the officer/employee is working and/or when it is most convenient for the person who is to be interviewed.
- c. If the interview is conducted while the officer/employee is off-duty, and if the officer/employee is in an overtime eligible position, the officer/employee shall be compensated in accordance with regular department and City procedures.
- d. All interviews should be conducted with no more than two interviewers present.
- e. All interviews shall be conducted for a reasonable period of time with breaks made available if the interview is lengthy.
- f. The officer/employee under investigation shall not be subjected to offensive language or threatened with punitive action. However, an officer/employee who

refuses to respond to questions or submit to an interview shall be informed that failure to do so may result in the termination of the interview process and the institution of disciplinary action, up to and including termination.

- g. The officer/employee may be accompanied by a representative of his/her choice, provided the presence of a particular representative does not unreasonably delay a scheduled interview or interrogation. The representative must not have been involved in the alleged incident. In such event, an alternate representative must be obtained.
- h. The investigator shall not discuss the merits of the investigation with the media.

2.08 Truthfulness and Cooperation

- a. Officers/employees shall, as a condition of their employment, truthfully and completely answer all questions specifically directed and related to the scope of employment and operations of Boise City that may be asked of them by any investigator or supervisor acting on behalf of the Office of the Community Ombudsman.
- b. Officers/employees shall, as a condition of their employment, cooperate fully and produce and turn over any evidence, tapes, documents, or other information relating to the investigation of a complaint when asked to by any investigator or supervisor acting on behalf of the Office of the Community Ombudsman.

2.09 Tape Recordings

- a. The complete interview of an officer/employee accused of a Class I violation shall be recorded and a copy may be obtained by the officer/employee under investigation upon request. The officer/employee may also bring his/her own recording device, if he/she wishes. The cost of taping and any mechanical devices used by the officer/employee shall be borne by the officer/employee.
- b. The person(s) conducting the interview should attempt to correct any malfunction of any recording device prior to continuing, should any such malfunction occur during the interview. Corrective action may include obtaining another recording device before proceeding.
- c. Any malfunction of the recording device which interferes with the complete recording of such interview shall be fully and completely reported in the investigative report.

2.10 Search of Storage Lockers, Desks, Files, and Vehicles

Officers/employees have no legal expectation of a right to privacy with regard to any property that is owned or leased by Boise City (“City”), or which is otherwise under the control of the City. This includes, but is not limited to, desks, files, lockers, office areas, computers, and vehicles, including City property which is assigned for individual or take-home use by an employee of the City.

2.11 Polygraph Examinations

The Office of the Community Ombudsman has the option of administering a polygraph examination to an officer/employee at the request of the officer/employee being investigated or charged, or under the conditions listed below. This exam will involve specific questions concerned with the alleged violation. If requested, officers/employees shall submit to such an exam when all of the following conditions are met:

- a. When the officer/employee has been accused of a violation of department and/or City policy or procedure that could result in his/her dismissal OR sufficient evidence exists which would lead a reasonable person to believe that the violation for which the officer/employee is accused may have been committed, and
- b. Conflicting statements of fact in the case have been established, and
- c. The accused officer/employee is ordered by his/her Department Head (at the request of the Community Ombudsman) to take the polygraph examination.

2.12 Confidentiality of Investigations and Reports

- a. Investigative files are considered to be personnel files and are therefore considered confidential. Disclosure of such records shall only be accomplished pursuant to law and Title 9, Chapter 3, of the Idaho Code. The Office of the Community Ombudsman may make synopses of investigations and the outcomes of such investigations public provided it is done in a manner which will not reveal individual officers’/employee’s identities to the general reader.
- b. When a complaint is forwarded from the Office of the Community Ombudsman to another department or agency for investigation, the Office of the Community Ombudsman shall notify the department or agency conducting the investigation of its duty to protect and maintain the confidentiality of any and all records, files, documents, information, tapes, evidence or other material relating to the

complaint and its subsequent investigation.

- c. Upon completion of an investigation into a complaint which was forwarded from the Office of the Community Ombudsman to another department or agency for investigation, the department/agency conducting the investigation shall send the completed investigative report and any and all documents, tapes, and/or related evidence to the Office of the Community Ombudsman. The department/agency conducting the investigation may retain in its confidential files a copy of any investigative report and related documents, tapes, and evidence, provided that they are treated as confidential personnel records which may not be released, copied, or otherwise divulged without court order.
- d. Only one copy of any investigative report and related documents and evidence shall be retained by the Office of the Community Ombudsman. The investigative report is not available to any person except:
 - (1) The Community Ombudsman and staff of the Office of the Community Ombudsman.
 - (2) The Mayor of Boise City.
 - (3) Members of the City Council of Boise City acting in Executive Session.
 - (4) The Department Head, or designee, of any involved officer/employee.
 - (5) The Boise City Attorney or designee.
 - (6) The involved officer/employee.
 - (7) Upon court order for disclosure (not subpoenas).
 - (8) Others as designated by the Community Ombudsman and legally entitled to confidential personnel records.

2.13 Investigative Standard

The investigative and findings standard for investigations conducted by and on behalf of the Office of the Community Ombudsman shall be the preponderance of evidence.

2.14 Completed Investigations

- a. Investigative time lines will begin on the date that an investigative tracking number is assigned to an investigation by the Office of the Community Ombudsman. The Office of the Community Ombudsman will make entries at that time on the Case Tracking System.
- b. Investigations will be completed as quickly as possible, but within 30 calendar days of the date that the case tracking number is assigned, unless intervening circumstances require an extension.
- c. An extension may be granted for up to 60 calendar days by the Community Ombudsman in the following cases:
 - (1) An extension may be granted upon a written request by the assigned investigator to the Community Ombudsman. This written request must include a summary of all investigative work already completed and that work which still remains. This extension must be granted prior to the end of the first 30 day period by making a note of the extension in the Case Tracking System.
 - (2) The Community Ombudsman may, on his/her own initiative, extend an investigation up to 60 days beyond the original due date. This extension must be granted prior to the end of the first 30 day period by making a note of the extension in the Case Tracking System.
- d. Investigations may be further extended by the Community Ombudsman from 90 calendar days up to 180 calendar days from date of assignment. This extension may be granted upon the submission of a written request by the assigned investigator that documents the reason(s) for the requested extension. This written request must include a summary of all investigative work already completed and that work which still remains.
- e. As with many other types of cases, investigation may reveal new allegations not cited in the original complaint or a change in the specific violation from that alleged. All new allegations directly related to the original complaint will be documented and disposed in the investigative report of the original complaint. In the case of new allegations that may arise in the course of the investigation and that are not related to the original complaint, either against the original employees listed in the complaint or against employees who were not included in the original complaint, the investigator will generate a new investigation of the unrelated complaints, following all guidelines of this policy.

- f. An investigation will be considered complete on the date that it is submitted to the Office of the Community Ombudsman for review. Completion will be established by the date noted on the Case Tracking System indicating submission to the Office of the Community Ombudsman for review by the Community Ombudsman.
- g. If the Community Ombudsman determines that a completed investigation requires additional investigation, the Community Ombudsman may reopen the case and issue an extension according to the provisions of this chapter and policy.

2.15 Classification of Findings

Only the Community Ombudsman has the authority to issue findings and conclusions related to a filed complaint on behalf of the Office of the Community Ombudsman. Each finding for a complaint shall allege a violation of a Boise City, Boise Police, or other City department policy, including general guidelines included in a policy manual, such as mission and philosophy statements, the Police Officers Code of Ethics, and/or violation of a law or ordinance. Allegations will be listed by title and code reference, if applicable. Each allegation in the completed investigation shall be classified according to one of the following:

- a. EXONERATED - The acts which provided the basis for the complaint or allegation did occur, but were justified, lawful, and proper.
- b. NO FINDING - The investigation cannot proceed because the complainant failed to disclose promised information to further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) or employee(s) involved.
- c. NOT SUSTAINED - The investigation failed to discover sufficient evidence to clearly prove or disprove the allegations made.
- d. SUSTAINED - The investigation disclosed sufficient evidence to clearly prove the allegation(s) made.
- e. UNFOUNDED - The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when individual officer(s) or employee(s) named were not involved in the act or in acts which may have occurred.



CHAPTER 3

REVIEW OF INTERNAL INVESTIGATIONS

3.00 REVIEW OF INTERNAL INVESTIGATIONS

It is the policy of the Office of the Community Ombudsman to review internal investigations conducted by those departments that have police or law enforcement responsibilities. The purpose of these reviews shall be to determine if the internal investigations are complete, thorough, objective, and fair.

3.01 Review of Investigations Alleging Serious Violations

The Office of the Community Ombudsman shall conduct a review of all internal investigations which meet the criteria to be classified as a Class I complaint under Chapter 2.00 of the policy and procedures manual. This shall include, but not be limited to, all internal investigations concerning allegations of the use of excessive or unnecessary force and/or a violation of one's constitutional or civil rights.

3.02 Review of Investigations Alleging Minor Violations

The Office of the Community Ombudsman shall conduct a review of no fewer than half of the internal investigations concerning allegations which meet the criteria to be classified as a Class II complaint under Chapter 2.00 of this policy and procedures manual.

3.03 Review Procedure

a. Monitoring of Open Investigations

- (1) The Office of the Community Ombudsman may monitor any internal investigation while the investigation is still open and in progress.
- (2) The Office of the Community Ombudsman shall notify the appropriate Department Head or his/her designee of any contacts it intends to make while monitoring an investigation which is still open and in progress.
- (3) Monitoring of any open investigation shall not include the initiation of any contact regarding the investigation with the complainant(s), involved officer(s)/employee(s), or witnesses. This does not preclude the possibility of independent contact regarding the investigation which is initiated by the complainant(s), involved officer(s)/employee(s), or witnesses.

- (4) The Office of the Community Ombudsman may review all documents, statements, recordings, evidence, and other information relating to the investigation.
 - (5) The Office of the Community Ombudsman may contact and discuss an open investigation with any and all investigators and/or other persons responsible for supervising and/or conducting the investigation.
- b. Review of Completed Investigations
- (1) The Office of the Community Ombudsman may review any internal investigation after the investigation is complete.
 - (2) In the course of its review of a completed investigation, the Office of the Community Ombudsman may not initiate any contact regarding the investigation with the complainant(s), involved officer(s)/employee(s), or witnesses.
 - (3) The Office of the Community Ombudsman may review all documents, statements, recordings, evidence, and other information relating to the investigation.
 - (4) The Office of the Community Ombudsman may contact and discuss an investigation with any and all investigators and/or other persons who were responsible for supervising and/or conducting the investigation.
 - (5) Upon completion of its review of a completed investigation, the Office of the Community Ombudsman may complete a written report summarizing its observations and recommendations (if any).
 - (6) The Office of the Community Ombudsman shall provide the appropriate Department Head or his/her designee with a copy of any written report of the Community Ombudsman's review of a completed investigation as soon as possible following the completion of the report. This will be provided as advisory to the Department Head for action as he/she deems appropriate.
- c. Review of both open and completed investigations shall include, but not be limited to, the following factors:
- (1) The thoroughness with which each and every allegation is being or was

investigated.

- (2) The extent to which every witness and/or person known to have information, knowledge, or evidence pertaining to the allegation(s) was or will be contacted and interviewed.
- (3) The nature and conduct of any and all interviews conducted with complainant(s), witnesses, involved officers/employees, and other persons having knowledge relating to the allegation(s).
- (4) The process of seeking, collecting, and maintaining any and all evidence pertaining to the investigation.
- (5) The extent to which information and/or leads developed in the course of the investigation were followed completely and thoroughly.
- (6) The factual and logical basis of any findings or conclusions reached during and/or after the completion of the investigation.

3.04 Confidentiality of Investigations and Reviews

All investigations reviewed by the Office of the Community Ombudsman, as well as any and all notes, documents, and/or reports generated by the Office of the Community Ombudsman as part of its review of an investigation, are confidential personnel records of Boise City. Review reports are not available to any person except:

- (1) The Community Ombudsman and staff of the Office of the Community Ombudsman.
- (2) The Mayor of Boise City.
- (3) Members of the City Council of Boise City acting in Executive Session.
- (4) The Department Head or designee of any involved officer/employee.
- (5) The Boise City Attorney.
- (6) The involved officer/employee.
- (7) Upon court order for disclosure (not subpoenas).

- (8) Others as designated by the Community Ombudsman and legally entitled to confidential personnel records.



CHAPTER 4

CITIZEN APPEALS OF INTERNAL INVESTIGATIONS

4.00 CITIZEN APPEALS OF INTERNAL INVESTIGATIONS

It is the policy of the Office of the Community Ombudsman to establish fair and equitable procedures governing the reception and disposition of appeals of the findings of internal investigations conducted by departments of Boise City.

4.01 Philosophy of Appeals

Citizens often file complaints regarding the actions of Boise City police officers/employees and other law enforcement personnel directly with the involved department. At times, following an investigation by the involved department and a subsequent finding of fact, citizens are not satisfied with the outcome of the investigation. It is the responsibility of the Community Ombudsman and the staff of the Office of the Community Ombudsman to answer questions from citizens and attempt to satisfy their concerns. If they wish, citizens shall have the right to file a formal appeal of the findings on their complaint with the Office of the Community Ombudsman.

4.02 Who May File an Appeal

- a. Any person who previously filed a complaint with the Boise Police Department, Boise Airport Peace Officers Division, or another Boise City department regarding the actions of a police or law enforcement employee, may file an appeal with the Office of the Community Ombudsman.
- b. Requests for appeals not initiated by the person(s) who filed the original complaint will not be taken.

4.03 Time Limit for Appeals

- a. The Office of the Community Ombudsman will only accept requests for appeals received within 30 days of the date on which the person who filed the original complaint was notified of the outcome of the investigation into the complaint.
- b. An exception may be granted by the Community Ombudsman in cases where the complainant was unable to request an appeal during the above time period due to an involuntary incapacity (e.g., hospitalization, incarceration, etc.).

4.04 Appeals Procedure

The following steps shall be taken once an appeal is accepted by the Office of the Community Ombudsman:

- a. Written notification shall be made to the involved officer/employee against whom the original allegation has been made and to either the Office of Internal Affairs of the Boise Police Department, the Manager of the Airport Peace Officers Division, or the appropriate Department Head. Such notifications shall be sent by the Office of the Community Ombudsman within five (5) working days from the date on which the appeal was accepted by the Office of the Community Ombudsman. Written notification to any or all of the above parties may be delayed for a reasonable amount of time if the Community Ombudsman determines that such notification is likely to result in the destruction, removal, alteration, or any other tampering of evidence, statements, and/or witnesses.
- b. A case review shall be performed by the Office of the Community Ombudsman, including, but not limited to, any investigative report, case file, and/or evidence pertaining to the original complaint.
- c. Based on the case review and any information presented by the person making the appeal, the Community Ombudsman shall determine whether or not to conduct further investigation.
- d. If, following the case review of an investigation, the Community Ombudsman determines that the investigation conducted by the involved department was thorough and complete, the Community Ombudsman shall issue a finding relative to the allegations made in the initial complaint.
- e. If, following the case review of an investigation, the Community Ombudsman determines that the investigation conducted by the involved department was either not thorough and complete or that new evidence and/or additional witnesses are available, the Community Ombudsman shall ensure that a thorough, complete, objective, and fair follow-up investigation is conducted.
- f. Following the completion of a follow-up investigation by or on behalf of the Office of the Community Ombudsman, the Community Ombudsman shall issue a finding relative to the allegations made in the initial complaint.
- g. A written notice from the Office of the Community Ombudsman to the complainant shall be made notifying him/her of the outcome of the case review, follow-up investigation (if conducted), and finding(s) by the Community Ombudsman. Such notice shall be sent within five (5) working days of the

issuance of finding(s) by the Community Ombudsman.

- h. A written notice from the Community Ombudsman to the involved officer/employee shall be made, as well as written notice to either the Office of Internal Affairs of the Boise Police Department, the Manager of the Airport Peace Officers Division, or the appropriate Department Head notifying them of the outcome of the case review, follow-up investigation (if conducted), and finding(s) by the Community Ombudsman. Such notice shall be sent within five (5) working days of the issuance of finding(s) by the Community Ombudsman.
- i. A written notice from the Community Ombudsman to the complainant shall be made notifying him/her of the final disposition of the case by the Chief of Police, Manager of the Airport Peace Officers Division, or the appropriate Department Head. Such notice shall be sent within five (5) working days of receipt of notification from the Chief of Police by the Community Ombudsman.

4.05 Investigative Responsibility and Case Management

The Community Ombudsman has primary responsibility for the follow-up investigation and case management of all appeals filed with the Office of the Community Ombudsman.

- a. Follow-up investigations, as determined by the Community Ombudsman, may be performed by:
 - (1) The Office of the Community Ombudsman.
 - (2) The Office of Internal Affairs of the Boise Police Department or any Boise Police Detective or Supervisor acting on behalf of the Office of Internal Affairs.
 - (3) The Manager of the Boise Airport Peace Officers Division.
 - (4) Another law enforcement or prosecutorial agency.
- b. In determining the most appropriate assignment of a follow-up investigation, the Community Ombudsman will consider the following factors:
 - (1) The wishes of the complainant, particularly any expressed fears or anxiety about interacting with the police during the follow-up investigation.
 - (2) Current case loads and expected turn around times.

- (3) The seriousness of the alleged offenses(s), the complexity of the required follow-up investigation, and the possibility of any criminal charges resulting from a follow-up investigation.
- (4) Potential or existing conflicts of interest.
- c. The Office of the Community Ombudsman shall retain a master file of all follow-up investigations resulting from appeals filed with the Office of the Community Ombudsman.

4.06 Investigation Guidelines

When any officer/employee becomes the subject of a follow-up investigation as a result of an appeal filed with the Office of the Community Ombudsman, the following guidelines will be adhered to:

- a. In those cases where the Community Ombudsman determines that there is credible evidence to suggest that any of the involved officer(s)/employee(s) may have committed a criminal offense, the Office of the Community Ombudsman and any investigator working on its behalf shall not interview or question in any way the involved officer(s)/employee(s) until either of the following conditions have been met:
 - (1) A criminal investigation has been conducted, completed, and turned over to the appropriate prosecutorial authority, or
 - (2) The Boise City Attorney determines that no criminal investigation needs to be conducted.
- b. Officer(s)/employee(s) shall be advised of administrative privileges under *Garrity v. New Jersey* (385 US 493) using the Administrative Privileges form prior to interview.
- c. Unless the seriousness of the follow-up investigation requires otherwise, any interviews should be conducted at a reasonable hour, preferably when the officer/employee is working and/or when it is most convenient for the person who is to be interviewed.
- d. If the interview is conducted while the officer/employee is off-duty and if the officer/employee is in an overtime eligible position, the officer/employee shall be compensated in accordance with regular department and City procedures.

- e. All interviews should be conducted with no more than two interviewers present.
- f. All interviews shall be conducted for a reasonable period of time with breaks made available if the interview is lengthy.
- g. The officer/employee under investigation shall not be subjected to offensive language or threatened with punitive action. However, an officer/employee who refuses to respond to questions or submit to an interview shall be informed that failure to do so may result in the termination of the interview process and the institution of disciplinary action, up to and including termination.
- h. The officer/employee may be accompanied by a representative of his/her choice, provided the presence of a particular representative does not unreasonably delay a scheduled interview or interrogation. The representative must not have been involved in the alleged incident. In such event, an alternate representative must be obtained.
- i. The investigator shall not discuss the merits of the investigation with the media.

4.07 Truthfulness and Cooperation

- a. Officers/employees shall, as a condition of their employment, truthfully and completely answer all questions specifically directed and related to the scope of employment and operations of Boise City that may be asked of them by any investigator or supervisor acting on behalf of the Office of the Community Ombudsman.
- b. Officers/employees shall, as a condition of their employment, cooperate fully and produce and turn over any evidence, tapes, documents, or other information relating to the investigation of a complaint when asked to by any investigator or supervisor acting on behalf of the Office of the Community Ombudsman.

4.08 Tape Recordings

- a. The complete interview of an officer/employee accused of a Class I violation (as defined in Chapter 2 of this policy) shall be recorded and a copy may be obtained by the officer/employee under investigation upon request. The officer/employee may also bring his/her own recording device, if he/she wishes. The cost of taping and any mechanical devices used by the officer/employee shall be borne by the officer/employee.

- b. The person(s) conducting the interview should attempt to correct any malfunction of any recording device prior to continuing, should any such malfunction occur during the interview. Corrective action may include obtaining another recording device before proceeding.
- c. Any malfunction of the recording device which interferes with the complete recording of such interview shall be fully and completely reported in the investigative report.

4.09 Search of Storage Lockers, Desks, Files, and Vehicles

Officers/employees have no legal expectation of a right to privacy with regard to any property that is owned or leased by Boise City (“City”), or which is otherwise under the control of the City. This includes, but is not limited to, desks, files, lockers, office areas, computers, and vehicles, including City property which is assigned for individual or take-home use by an employee of the City.

4.10 Polygraph Examinations

The Office of the Community Ombudsman has the option of administering a polygraph examination to an officer/employee at the request of the officer/employee being investigated or charged, or under the conditions listed below. This exam will involve specific questions concerned with the alleged violation. If requested, officers/employees shall submit to such an exam when all of the following conditions are met:

- a. When the officer/employee has been accused of a violation of department and/or City policy or procedure that could result in his/her dismissal OR sufficient evidence exists which would lead a reasonable person to believe that the violation for which the officer/employee is accused may have been committed, and
- b. Conflicting statements of fact in the case have been established, and
- c. The accused officer/employee is ordered by his/her Department Head (at the request of the Community Ombudsman) to take the polygraph examination.

4.11 Confidentiality of Follow-up Investigations and Reports

- a. Investigative files are considered to be personnel files and are therefore considered confidential. The Office of the Community Ombudsman may make synopses of follow-up investigations and the outcomes of such investigations public provided it is done in a manner which will not reveal individual

officers’/employee’s identities to the general reader.

- b. When an appeal is forwarded from the Office of the Community Ombudsman to another department or agency for follow-up investigation, the Office of the Community Ombudsman shall notify the department or agency conducting the investigation of its duty to protect and maintain the confidentiality of any and all records, files, documents, information, tapes, evidence or other material relating to the complaint and its subsequent investigation.
- c. Upon completion of a follow-up investigation, which was forwarded from the Office of the Community Ombudsman to another department or agency for investigation, the department/agency conducting the investigation shall send the completed investigative report and any and all documents, tapes, and/or related evidence to the Office of the Community Ombudsman. The department/agency conducting the investigation may retain in its confidential files a copy of any investigative report and related documents, tapes, and evidence, provided that they are treated as confidential personnel records which may not be released, copied, or otherwise divulged without court order.
- d. Only one copy of any investigative report and related documents and evidence shall be retained by the Office of the Community Ombudsman. The investigative report is not available to any person except:
 - (1) The Community Ombudsman and staff of the Office of the Community Ombudsman.
 - (2) The Mayor of Boise City.
 - (3) Members of the City Council of Boise City acting in Executive Session.
 - (4) The involved officer(s)/employee(s) Department Head or designee.
 - (5) The Boise City Attorney.
 - (6) The involved officer/employee.
 - (7) Upon court order for disclosure (not subpoena).
 - (8) Others as designated by the Community Ombudsman and legally entitled to confidential personnel records.

4.12 Investigative Standard

The investigative and findings standard for follow-up investigations conducted by and on behalf of the Office of the Community Ombudsman shall be the preponderance of evidence.

4.13 Completed Follow-up Investigations

- a. Investigative time lines will begin on the date that a follow-up investigation is initiated by the Office of the Community Ombudsman. The Office of the Community Ombudsman will make entries at that time on the Case Tracking System.
- b. Follow-up investigations will be completed as quickly as possible, but within 30 calendar days of the date that a follow-up investigation is initiated by the Office of the Community Ombudsman, unless intervening circumstances require an extension.
- c. An extension may be granted for up to 60 calendar days by the Community Ombudsman in the following cases:
 - (1) An extension may be granted upon a written request by the assigned investigator to the Community Ombudsman. This extension must be granted prior to the end of the first 30 day period by making a note of the extension in the Case Tracking System. This written request must include a summary of all investigative work already completed and that work which still remains.
 - (2) The Community Ombudsman may, on his/her own initiative, extend an investigation up to 60 days beyond the original due date. This extension must be granted prior to the end of the first 30 day period by making a note of the extension in the Case Tracking System.
- d. Follow-up investigations may be further extended by the Community Ombudsman from 90 calendar days up to 180 calendar days from date of assignment. This extension may be granted upon the submission of a written request by the assigned investigator that documents the reason(s) for the requested extension. This written request must include a summary of all investigative work already completed and that work which still remains.
- e. As with many other types of cases, follow-up investigations may reveal new

allegations not cited in the original complaint or a change in the specific violation from that alleged. All new allegations directly related to the original complaint will be documented and disposed in the investigative report of the original complaint. In the case of new allegations that may arise in the course of the investigation and that are not related to the original complaint, either against the original employee(s) listed in the complaint or against an employee(s) who was not included in the original complaint, the investigator will generate a new investigation of the unrelated complaints, following all guidelines of this policy.

- f. A follow-up investigation will be considered complete on the date that it is submitted to the Office of the Community Ombudsman for review. Completion will be established by the date noted on the Case Tracking System indicating submission to the Office of the Community Ombudsman for review by the Community Ombudsman.
- g. If the Community Ombudsman determines that a completed follow-up investigation requires additional investigation, the Community Ombudsman may reopen the case and issue an extension according to the provisions of this Chapter and Policy.

4.14 Classification of Findings

Only the Community Ombudsman has the authority to issue findings and conclusions related to an appeal on behalf of the Office of the Community Ombudsman. Each finding for an appeal shall allege a violation of a Boise City, Boise Police, or other City Department policy, including general guidelines included in a policy manual, such as mission and philosophy statements, the Police Officers Code of Ethics, and/or violation of a law or ordinance. Allegations will be listed by title and code reference, if applicable. Each allegation in the completed investigation shall be classified according to one of the following:

- a. EXONERATED - The acts which provided the basis for the complaint or allegation did occur, but were justified, lawful, and proper.
- b. NO FINDING - The investigation cannot proceed because the complainant failed to disclose promised information to further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) or employee(s) involved.
- c. NOT SUSTAINED - The investigation failed to discover sufficient evidence to

clearly prove or disprove the allegations made.

- d. SUSTAINED - The investigation disclosed sufficient evidence to clearly prove the allegation(s) made.
- e. UNFOUNDED - The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when individual officer(s) or employee(s) named were not involved in the act or in acts which may have occurred.



CHAPTER 5

CRITICAL INCIDENTS

5.00 CRITICAL INCIDENTS

It is the policy of the Office of the Community Ombudsman, in the event of a critical incident (as defined below), to act as an independent observer to any criminal, administrative, and/or civil investigation conducted by or on behalf of either the Boise City Police Department or the Airport Peace Officers Division.

Furthermore, it is the policy of the Office of the Community Ombudsman, in the event of a critical incident (as defined below), to conduct an independent administrative investigation into the incident.

5.01 Definition of a Critical Incident

Critical incidents include, but are not limited to, situations involving the following:

- a. Use of force or any other Department action that results in death or serious bodily injury. (Serious bodily injury is an injury that results in the subject being admitted to a hospital).
- b. Use of Deadly Force where only minor bodily injuries occur.
- c. Intentional use of Deadly Force but no injury occurs (excluding animals).
- d. Vehicle pursuits, roadblocks or intercepts resulting in death or serious bodily injury.
- e. Police employee involved in a traffic accident resulting in death or serious bodily injury, while operating a City vehicle or a private vehicle while on City business.

5.02 Observation of the Criminal, Administrative, and Civil Investigations

- a. The Community Ombudsman shall be notified immediately in the event of the occurrence of a critical incident.
- b. The Community Ombudsman shall respond to the scene of the critical incident.
- c. Upon departure of the involved officer(s)/employee(s), the Community Ombudsman may conduct an inspection of the scene.

- d. The Community Ombudsman may attend any and all investigative briefings and review physical evidence and investigative statements.
- e. Until the criminal investigation is complete, the Community Ombudsman and all members of the staff of the Office of the Community Ombudsman shall not initiate any contact with those officer(s)/employee(s) who were involved in the critical incident.

5.03 Independent Administrative Investigation

Upon completion of the criminal investigation, the Office of the Community Ombudsman shall conduct an Independent Administrative Investigation:

- a. Gather additional information and evidence required to complete an Administrative Investigation and review of the incident.
- b. Determine if officer(s)/employee(s) violated City and/or department policy and procedures.
- c. Evaluate policies, procedures, training, equipment, and supervision to determine any recommended changes that may be necessary.
- d. Complete and submit a report to either the Chief of Police or the Chief of the Airport Peace Officers Division with recommendations.

5.04 Investigative Responsibility and Case Management

The Community Ombudsman has primary responsibility for the investigation and case management of all critical incident administrative investigations conducted by the Office of the Community Ombudsman.

5.05 Investigation Guidelines

During the conduct of a Critical Incident Administrative Investigation conducted by the Office of the Community Ombudsman, the following guidelines will be adhered to:

- a. Officer(s)/employee(s) shall be advised of administrative privileges under Garrity v. New Jersey (385 US 493) using the Administrative Privileges form prior to interview.
- b. Unless the investigation requires otherwise, any interviews should be conducted at

a reasonable hour, preferably when the officer/employee is working and/or when it is most convenient for the person who is to be interviewed.

- c. If the interview is conducted while the officer/employee is off-duty, and if the officer/employee is in an overtime eligible position, the officer/employee shall be compensated in accordance with regular department and City procedures.
- d. All interviews should be conducted with no more than two interviewers present.
- e. All interviews shall be conducted for a reasonable period of time with breaks made available if the interview is lengthy.
- f. The officer/employee under investigation shall not be subjected to offensive language or threatened with punitive action. However, an officer/employee who refuses to respond to questions or submit to an interview shall be informed that failure to do so may result in the termination of the interview process and the institution of disciplinary action, up to and including termination.
- g. The officer/employee may be accompanied by a representative of his/her choice, provided the presence of a particular representative does not unreasonably delay a scheduled interview or interrogation. The representative must not have been involved in the alleged incident. In such event, an alternate representative must be obtained.

5.06 Truthfulness and Cooperation

- a. Officers/employees shall, as a condition of their employment, truthfully and completely answer all questions specifically directed and related to the scope of employment and operations of Boise City that may be asked of them by any investigator or supervisor acting on behalf of the Office of the Community Ombudsman.
- b. Officers/employees shall, as a condition of their employment, cooperate fully and produce and turn over any evidence, tapes, documents, or other information relating to the investigation of a critical incident when asked to by any investigator or supervisor acting on behalf of the Office of the Community Ombudsman.

5.07 Tape Recordings

- a. The complete interview of an officer/employee involved in a critical incident shall

be recorded and a copy may be obtained by the officer/employee under investigation upon request. The officer/employee may also bring his/her own recording device, if he/she wishes. The cost of taping and any mechanical devices used by the officer/employee shall be borne by the officer/employee.

- b. The person(s) conducting the interview should attempt to correct any malfunction of any recording device prior to continuing, should any such malfunction occur during the interview. Corrective action may include obtaining another recording device before proceeding.
- c. Any malfunction of the recording device which interferes with the complete recording of such interview shall be fully and completely reported in the investigative report.

5.08 Search of Storage Lockers, Desks, Files, and Vehicles

Officers/employees have no legal expectation of a right to privacy with regard to any property that is owned or leased by Boise City (“City”), or which is otherwise under the control of the City. This includes, but is not limited to, desks, files, lockers, office areas, computers, and vehicles, including City property which is assigned for individual or take-home use by an employee of the City.

5.09 Polygraph Examinations

The Office of the Community Ombudsman has the option of administering a polygraph examination to an officer/employee at the request of the officer/employee being investigated, or under the conditions listed below. This exam will involve specific questions concerned with the critical incident. If requested, officers/employees shall submit to such an exam when all of the following conditions are met:

- a. When the officer/employee has been accused of a violation of Department and/or City policy or procedure that could result in his/her dismissal OR sufficient evidence exists which would lead a reasonable person to believe that the violation for which the officer/employee is accused may have been committed, and
- b. Conflicting statements of fact in the case have been established, and
- c. The accused officer/employee is ordered by his/her Department Head (at the request of the Community Ombudsman) to take the polygraph examination.

5.10 Confidentiality of Investigations and Reports

- a. Investigative files are considered to be personnel files and are therefore considered confidential. The Office of the Community Ombudsman may make synopses of investigations and the outcomes of such investigations public provided it is done in a manner which will not reveal individual officers'/employee's identities to the general reader.
- b. Only one copy of any investigative report and related documents and evidence shall be retained by the Office of the Community Ombudsman. The investigative report is not available to any person except:
 - (1) The Community Ombudsman and staff of the Office of the Community Ombudsman.
 - (2) The Mayor of Boise City.
 - (3) Members of the City Council of Boise City acting in Executive Session.
 - (4) The Department Head or designee of any involved officer/employee.
 - (5) The Boise City Attorney.
 - (6) The involved officer/employee.
 - (7) Upon court order for disclosure (not subpoena).
 - (8) Others as designated by the Community Ombudsman and legally entitled to confidential personnel records.

5.11 Investigative Standard

The investigative and findings standard for investigations conducted by the Office of the Community Ombudsman shall be the preponderance of evidence.

5.12 Classification of Findings

Only the Community Ombudsman has the authority to issue findings and conclusions related to an investigation on behalf of the Office of the Community Ombudsman. Each finding shall allege a violation of a Boise City, Boise Police, or other City Department policy, including general guidelines included in a policy manual, such as mission and philosophy statements, the Police Officers Code of Ethics, and/or violation of a law or ordinance. Allegations will be listed by title and code reference, if applicable. Each

allegation in the completed investigation shall be classified according to one of the following:

- (1) EXONERATED - The acts which provided the basis for the complaint or allegation did occur, but were justified, lawful, and proper.
- (2) NO FINDING - The investigation cannot proceed because the complainant failed to disclose promised information to further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) or employee(s) involved.
- (3) NOT SUSTAINED - The investigation failed to discover sufficient evidence to clearly prove or disprove the allegations made.
- (4) SUSTAINED - The investigation disclosed sufficient evidence to clearly prove the allegation(s) made.
- (5) UNFOUNDED - The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when individual officer(s) or employee(s) named were not involved in the act or in acts which may have occurred.



CHAPTER 6

FALSE REPORTS

6.00 FALSE REPORTS

The Office of the Community Ombudsman exists to ensure professional and accountable law enforcement for the citizens of Boise. Honest feedback is essential to maintaining a police department that is both trustworthy and responsible to the community. Therefore, it is critical that truthfulness be maintained in the filing and investigation of complaints against the police.

It is the policy of the Office of the Community Ombudsman to discourage the filing of false complaints.

6.01 Definition of a False Complaint

The Community Ombudsman shall determine that a complaint is false when there is reasonable cause to believe that both of the following are true:

- a. Each and every one of the material allegations made in the complaint are not true, and
- b. The person(s) filing the complaint did so knowing that the allegations were not true.

6.02 False Complaint Procedure

Once the Community Ombudsman has determined that a complaint is false, the following procedure shall be followed:

- a. All investigative action connected with the complaint shall immediately cease.
- b. Written notification of the determination that the complaint was false shall be sent to the involved officer/employee and to either the Office of Internal Affairs of the Boise Police Department, the Manager of the Airport Peace Officers Division, or the appropriate Department Head against whom the allegation has been made. Such notifications shall be sent by the Office of the Community Ombudsman within five (5) working days from the date on which the Community Ombudsman made the determination that the complaint was false.
- c. Written notification of the determination that the complaint was false shall be sent to the complainant(s). Such notification shall be sent within five (5) working days from the date on which the Community Ombudsman made the determination that

- the complaint was false.
- d. The complaint file shall be closed and all records of the complaint shall indicate that it was a false complaint.
- e. Any evidence that a person knowingly provided false information under oath in a sworn statement and/or to a police officer, may be forwarded to the appropriate law enforcement agency for investigation and possible prosecution.



CHAPTER 7

CRIMINAL INVESTIGATIONS

7.00 Criminal Investigations

It is the policy of the Office of the Community Ombudsman to request that a criminal investigation be conducted by an independent law enforcement agency (other than the Boise Police Department) when the Community Ombudsman determines that there is credible evidence to suggest that an officer/employee may have committed a criminal offense.

7.01 Procedure For Requesting a Criminal Investigation

Once the Community Ombudsman determines that there is credible evidence to suggest that an officer/employee may have committed a criminal offense, the following procedure shall be followed:

- a. The Community Ombudsman shall contact the Boise City Attorney and the Ada County Prosecutor as soon as possible and present the evidence suggesting the presence of a criminal violation.
- b. If the Boise City Attorney and the Ada County Prosecutor concur with the determination made by the Community Ombudsman, the Ada County Prosecutor may request a criminal investigation by the Idaho State Police or other appropriate independent law enforcement agency (other than the Boise Police Department).
- c. The Community Ombudsman shall act as the point of contact for the Idaho State Police or other law enforcement agency during the course of the criminal investigation.
- d. As required in Chapter 2 of this same Policies and Procedures Manual, the Office of the Community Ombudsman and any investigator acting on its behalf shall not interview or question in any way the involved officer(s)/employee(s) until the criminal investigation has been conducted, completed, and turned over to the appropriate prosecutorial authority.

7.02 Providing Information to Law Enforcement Agencies

Information, records, recordings, evidence, documents, and all other materials (whether originals or copies) obtained and/or generated by the Office of the Community Ombudsman, and by any person working on behalf of the Office of the Community Ombudsman shall not be provided to any law enforcement agency except as provided by court order, with the following exceptions:

- a. As specified in other sections of this same policy and procedures manual, see sections 2.12 (d), 3.04, 4.11 (d), and 5.10 (b).
- b. When a criminal investigation has been requested by the Community Ombudsman, as specified in section 7.01, above. In such cases, the Office of the Community Ombudsman shall forward to the investigating agency only those taped and written statements made by non-Boise City employee witnesses and/or victims.

7.03 Segregation of Employee Statements Obtained Under Administrative Privilege

When the Office of the Community Ombudsman requests an independent criminal investigation, it shall immediately segregate any and all employee statements obtained under “administrative privilege” in the course of its administrative investigation. These employee statements shall be stored in a separate file folder apart from all other material associated with that particular case.



CHAPTER 8

OUTSIDE LEGAL COUNSEL

8.00 OUTSIDE LEGAL COUNSEL

It is the policy of the Office of the Community Ombudsman to seek the advice of outside legal counsel at the City's expense when, in the opinion of the Community Ombudsman, such counsel is needed and when, after consultation by the Community Ombudsman with the City Attorney or designee, it is agreed that a conflict of interest exists between the charge and directive required of the Office of the Community Ombudsman and the interests of the City of Boise, the City Council, and/or the Mayor. This consultation shall be within the course and scope of the employment of the Community Ombudsman.

8.01 Procedure For Contacting Outside Counsel

- a. The Community Ombudsman shall determine that a legal opinion, advice, or counsel is necessary in order fulfill the duties, charge, or mission of the Office of the Community Ombudsman.
- b. The Community Ombudsman shall first seek the needed legal services from the Boise City Attorney or designee, unless the Community Ombudsman determines in advance that a conflict of interest may exist.
- c. When the Community Ombudsman determines that the City Attorney may have a conflict of interest, the Community Ombudsman shall discuss the articulated facts that arise to the conflict with the City Attorney or designee.
- d. If the City Attorney or designee and the Community Ombudsman agree that a conflict of interest does exist, the Community Ombudsman shall be free to seek the legal services of that law firm under contract at that time to provide legal services to the Office of the Community Ombudsman. If the City Attorney or designee does not agree that a conflict of interest exists, the Community Ombudsman shall be free to appeal this determination to the Mayor. If the Mayor determines that a conflict of interest does exist, the Community Ombudsman shall be free to seek the legal services of that law firm under contract at that time to provide legal services to the Office of the Community Ombudsman.

8.02 Procedure For Notifying Mayor and City Council

- a. As soon as possible, whether before or after consultation with outside counsel, the Community Ombudsman shall inform the Mayor of such articulated facts that arise to the level of a conflict.

- b. Subsequently and as soon as possible, the Community Ombudsman shall advise the City Council, in Executive Session, of the articulated facts that arise to the level of conflict.