

Fauquier County Department of Fire Rescue

OPERATING PROCEDURE

No. 129



Internal Administrative Investigation

Effective Date: March 1, 2009

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Revision Date: February 16, 2018

Forms: FRFs 917/918

Approved By: Darren L. Stevens, Fire Rescue Chief

PURPOSE

To ensure the integrity of the Fauquier County Department of Fire, Rescue, and Emergency Management ("Department") by establishing procedures for investigating complaints and allegations of misconduct against members of the department. These procedures will ensure the prompt and thorough investigation of such allegations to determine whether the misconduct occurred, whether disciplinary action is warranted, and whether existing policies, procedures and training are adequate.

SCOPE

This regulation pertains to all Fauquier County Department of Fire, Rescue and Emergency Management uniformed career members (operational and administrative).

I. PREFACE

This procedure is based on the policy that discipline is a function of command and a well-disciplined force is one that voluntarily conforms to all rules and orders. All fire department personnel are in a unique position of public trust and responsibility. The public and the department have a vital interest in expecting members to give frank and honest replies to questions which are directly related to the performance of their official duties and/or their fitness to hold public employment. This policy is promulgated in accordance with these considerations.

II. INCIDENTS TO BE INVESTIGATED

- A. The incidents that are to be handled in accordance with the provisions of this procedure are alleged or suspected misconduct or violations of statutes, ordinances, operating procedures, or departmental policies, rules, and regulations by any member of the department.
- B. The types of incidents that may be investigated include, but are not limited to:
 1. Complaints from members of the public – all allegations of impropriety on the part of any member shall be immediately reported to the employee's supervisor who shall review the complaint. If the complaint cannot be resolved without an investigation, the supervisor shall obtain all facts relevant to the complaint. The seriousness of the complaint is the determining factor in whether an internal investigation should be conducted.

Desire to Serve

Ability to Perform

Courage to Act

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- 2. Alleged violations reported to supervisory or command personnel by employees of the department.
 - 3. Those actions observed by supervisory or command personnel which appear to be in violation of law or departmental policies, rules, and/or regulations, or otherwise determined to be misconduct.
- C. Cases typically investigated at the battalion or station level include, but are not limited to:
- 1. General complaints concerning infractions of regulations and/or the manner in which the member's duties are performed; and
 - 2. Complaints relative to differences of opinion between a member and a citizen arising from the performance of duty.
- D. Issues concerning medical procedures and/or protocols shall be reported to the assistant chief who shall coordinate findings with the investigative officer.
- E. Investigative reports limited to Section C generated at the battalion or station level shall not be routinely forwarded to the chief of the department (i.e. verbal counseling). The shift battalion chief shall be advised of all investigations governed by this procedure and handled at the station level.
- F. Supervisors shall report through the appropriate chain of command to the assistant chief, any reports of infractions that may require punitive sanctions greater than may be imposed within the scope of their authority, or which require investigative resources not readily available at their level.
- G. In making the determination whether to conduct a formal internal investigation, the assistant chief shall take into consideration the nature of the alleged violation, any extenuating circumstances surrounding the incident and any past record of misconduct. The assistant chief shall consult with the chief of the department, who shall have the final assignment authority.
- H. Upon determination of the proper investigating authority, only pertinent information relating to the complaint shall be forwarded to the assistant fire chief.

III. PROCEDURAL GUARANTEES

- A. When an investigation involves a firefighter or emergency medical technician, the investigating officer shall comply with the Firefighters and Emergency Medical Technicians Procedural Guarantee set forth in the Code of Virginia, Title 9, Chapter 3 ([9.1-300](#) thru [9.1-304](#)). The Procedural Guarantees do not apply to non-uniformed personnel, nor to informal counseling, or to minor infractions which result in disciplinary action equal to or less than a written reprimand.

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- B. The term “interrogation” as used in this operating procedure (OP) refers to those instances which occur outside of the standard investigations conducted by line supervisors for subordinate personnel (i.e. tardiness, vehicle accidents, OP violations, etc.). “Interrogation” is defined as any questioning of a formal nature as used in the Code of Virginia, Title 9 Chapter 5 Law-Enforcement Officers Procedural Guarantee Act (9.1-500 thru 9.1-507, that could lead to dismissal, demotion, or suspension of a firefighter or emergency medical technician for punitive reasons.
- C. When a firefighter or emergency medical technician is subjected to an interrogation which could lead to dismissal, demotion or suspension for punitive reasons, the investigating officer shall utilize the Firefighter’s and Emergency Medical Technicians Procedural Guarantees FRF 917 to inform the employee of his/her procedural guarantees. The investigating officer shall also provide the employee with written notice in sufficient detail of the investigation in order to reasonably apprise him/her of the nature of the investigation. The Investigation Warning Form FRF 918 shall be used for this purpose.
- D. Department personnel conducting internal investigations, which are strictly administrative in nature, are not required to allow the employee being interviewed to have an attorney, supervisor or other representative present. This, however, shall not preclude the employee from seeking counsel prior to or after the interview.
- E. Employees interrogated/interviewed as part of an internal/administrative investigation are entitled to a copy of the transcript made of their interrogation/interview.
- F. A copy of transcripts of interviews shall be provided to the employee within 15 business days after the employee requests it in writing. Additionally, the employee shall retain the right to review any tape recordings produced during interviews once the transcript has been produced.

IV. COMPLAINT PROCEDURES

- A. The chief of the department coordinates and exercises supervision over investigations of complaints or allegations of misconduct against employees of the department.
- B. Upon receipt of a complaint, the chief of the department may:
 - 1. Refer it to the assistant chief or deputy chief for investigation;
 - 2. Provide assistance to other investigating authorities when requested; and/or
 - 3. Initiate an independent investigation when a complaint is of a serious nature or might result in criminal charges.

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- C. For those complaints deemed to require an official internal/administrative investigation, the chief of the department shall maintain a control log containing the following information:
 - 1. Date and nature of complaint;
 - 2. A control number;
 - 3. Name of person filing complaint;
 - 4. Name of person complained against; and
 - 5. Findings/case status.

- D. Access to the Internal Affairs control log shall be restricted to:
 - 1. The chief of the fire department; and
 - 2. Assistant chief; and
 - 3. Administrative assistant to the chief of the fire department.

V. CHIEF OFFICER’S RESPONSIBILITY

- A. Chief Officers (chief, assistant chief, battalion chiefs, or their designees) shall have the responsibility for directing any investigation concerning a member within his/her division unless he/she determines the allegation to be outside his/her scope of authority. If the chief officer is of the opinion that the allegation could result in disciplinary action beyond his/her scope of authority to administer (i.e. suspension, demotion, dismissal), he/she shall forward the complaint through the chain of command to the chief of the department.

- B. The chief of the department shall be responsible for ensuring a complete and expeditious investigation of all cases referred to him/her. He/she shall request assistance from other divisions and/or agencies as necessary. Upon completion of the final report, the chief of the department shall have the opportunity to meet with the member and shall provide the member with the findings of the investigation in writing as they pertain to the employee.

- C. The chief of the department shall be advised by the investigating authority of any new information developed during the course of an investigation which may result in the following:
 - 1. Reassigning an employee to other duties so he/she may receive closer supervision or be separated from the public or other members; or

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- 2. Removing a member from duty/operational status, placing him/her on administrative leave, and/or seeking his/her immediate suspension.

- D. Written statements may be taken from the member under investigation, witnesses, and complainants when they are helpful or desirable in arriving at a sound conclusion. Statements need not be in the form of questions and answers, but may be in the form of a memorandum or narrative report.

- E. Should it be determined at any time during the investigation that the complaint or allegation is clearly unfounded, the investigation shall be terminated. All relevant information supporting the termination of the investigation and the dismissal of the allegation shall be documented in a report to the fire chief of the department and transmitted through the appropriate chain of command.

VI. INDIVIDUAL RESPONSIBILITY

- A. Each member of the department shall cooperate fully with personnel assigned to conduct internal investigations. Supervisory personnel or senior staff shall initiate investigations into observed infractions or complaints or allegations which fall within the scope of their authority.

- B. It shall be the responsibility of the employee/member to answer fully and truthfully all questions asked by the investigating authority pertaining to the investigation.

- C. During the course of an internal investigation, an employee/member does not have the right to refuse to answer any question concerning his/her performance of duty, adherence to departmental rules, regulations, policies, procedures, or suspected misconduct. If a member refuses to answer questions relating to an administrative investigation, or if he/she is untruthful in answering questions, he/she shall be subject to department charges which could result in disciplinary action up to and including dismissal and/or removal from operational status. However, any statements made under these circumstances and pursuant to an official internal/administrative investigation cannot be used against him/her in criminal prosecution.

- D. In order to facilitate internal investigations, employees placed on administrative leave during the course of an investigation shall contact the chief of the department on their normally scheduled work days unless directed to do otherwise by the investigating authority.

- E. If, during the course of an administrative/internal investigation, the investigating authority determines reasonable cause exists to justify a member's submission to a medical, physical, psychiatric, laboratory, or polygraph examination, the member shall submit to such test or exam. The tests and exams may include, but are not limited to, breathalyzer, blood and urine tests, DNA, photographic and physical line-ups, voice and handwriting exemplars, and/or a polygraph

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examination. Tests and examinations shall be performed in a reasonable manner. Results shall not be used in any criminal proceeding against the individual tested.

1. During the course of an investigation, testimony may indicate that other employees, not the subject of an investigation, could be considered chemically dependent. The investigating officer shall assess the creditability of such testimony and shall notify the chief of the department. To protect employees who have privately initiated and completed professional treatment for chemical dependency, or are currently under professional treatment, investigations related to chemical dependency shall be conducted in the following manner.
 - a. The employee under investigation may claim a self-referral for chemical dependence and have completed or be participating in a professional treatment plan.
 - b. Employees implicated only by another's testimony and not currently under investigation may choose to sign a release-of-information permitting the chief of the department to verify that treatment was completed and that the employee is now free of chemical dependence. Once verification is received, further investigation relating to past chemical dependency shall cease.
 - c. Employees under investigation for current chemical dependency shall be required to sign a release-of-information permitting the chief of the department to verify that treatment has been completed, or that the employee is participating in a professional treatment program. Once verification is received, further investigation relating to chemical dependency shall cease. The chief of the department may require the employee to sign a back-to-work agreement for employees currently receiving treatment.
 2. The protection afforded employees by sections a., b., c., applies only to past chemical dependency. Investigation of violations of other departmental procedures, regulations or personnel regulations shall continue as directed by the chief of the department.
- F. If an employee refuses to submit to a test or examination as ordered, he/she shall be subject to departmental charges of insubordination which could result in disciplinary action up to and including dismissal and/or removal from operational status.
- G. The investigating officer shall be responsible for consulting with the chief of the department for approval of such tests or exams.
- H. If the chief of the department is unavailable, the acting chief shall be consulted.

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VII. INVESTIGATIVE TESTS

A. Drug Tests

1. A member shall submit to any test to determine the presence or amount of illegal (those on the federal list of controlled substances) and/or prescription drugs within his/her system when he/she is ordered to do so by the investigating authority or other authorized supervisor. Such an order shall be issued only when there is reason to believe that the employee has used illegal, improper, and/or inappropriate drugs in the past six months.

B. Polygraph Examinations

1. While the polygraph is recognized as an important investigative aid, certain restrictions must be placed on its use. The polygraph is a valid technique when used to confirm or disprove statements which cannot be corroborated by other means. It may be used in internal investigations under the following circumstances.
 - a. If inconsistencies or conflicts appear in the statements of one or more witnesses or members in the course of an internal investigation, all reasonable alternative methods of checking the information should be exhausted prior to requesting a polygraph examination.
 - b. If, after exhausting all reasonable alternative investigative methods, inconsistencies or conflicts still exist, the investigating authority may request the use of the polygraph. Use of a polygraph examination shall be approved by the chief of the department or acting chief after he/she has determined that the polygraph is justified and that the necessary information cannot reasonably be obtained through other means.
 - c. If a member of the department refuses to voluntarily submit to a polygraph examination, he/she may be ordered to do so by the chief of the department or his/her designated authority. The employee shall be notified of the date, time and place of the polygraph examination by written order signed by the chief of the department or his/her designated authority.
 - d. Polygraph examinations shall not be scheduled for witnesses or employees immediately following the incident or after lengthy interrogation. Since results of a polygraph depend upon the physiological reactions of the examinee, accurate results cannot be obtained if the subject is distraught or emotionally exhausted. The decision of the Polygraph Examiner as to the suitability of the subject shall be final.

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VIII. CLASSIFICATION OF INVESTIGATION RESULTS

- A. Upon completion of an investigation, its findings shall be classified as follows:
 - 1. Unfounded – Based on the preponderance of credible evidence, the alleged behavior did not occur.
 - 2. Not sustained – There is insufficient evidence to either prove or disprove the allegation of misconduct by a preponderance of the evidence.
 - 3. Sustained – Violation of law, ordinance, rule, regulation or other misconduct is established by a preponderance of credible evidence.
 - 4. Exonerated – The incident complained of occurred, but was lawful and proper.
- B. Each allegation of misconduct investigated shall be so classified. Upon classification as sustained, appropriate disciplinary action, if any, shall be administered.

IX. REPORTING

- A. Upon completion of the investigation, the final report shall include:
 - 1. Summary of events
 - 2. Classification of the findings as described in Section VIII
 - 3. When sustained, include:
 - a. The rule violated, if any
 - b. The nature of the violation or misconduct
 - c. When appropriate, the disciplinary action recommended or imposed
 - 4. Where appropriate, recommendations as to modification of departmental rules, regulations, policies, and training.
- B. If the department’s investigation is conducted by an authority other than the chief of the department, the report and other related documents shall be forwarded to the chief of the department who shall be responsible for the security of the material.
- C. Final reports shall not be delayed because of any pending court action.

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- D. The results of an internal investigation shall only be released to the following:
 - 1. The chief of the department and assistant chief, as appropriate;
 - 2. The investigating authority, if other than the chief of fire department; and
 - 3. The employee under investigation, upon request. The names of the complainant(s) who wish to remain anonymous shall not be released.

- E. Acknowledgement of the receipt of a complaint(s) shall be provided to the complainant(s).