

CHAPTER V Personal Behavior and Appearance

SUBJECT 4 Disciplinary Investigations

504.01 Goals

- A. To insure the integrity of the Cincinnati Fire Department by establishing procedures for handling complaints and disciplinary actions against members of the department.
- B. To insure the prompt and thorough investigation of complaints, to clear the innocent, establish guilt and facilitate suitable disciplinary action.

504.03 Objectives

- A. To protect the public, as citizens have a right to expect efficient, fair and impartial fire protection and emergency medical service. Therefore, any misconduct by department personnel must be detected, thoroughly investigated, and properly adjudicated to assure the maintenance of these services.
- B. Protection of the Fire Department. The department is evaluated and judged by the conduct of individual members and operations of the department. It is imperative that the entire organization not be subjected to public censure because of misconduct by a few individual members. When an informed public knows that the Fire Department honestly and fairly investigates and adjudicates all allegations of misconduct against its members, they will be less likely to raise a cry of indignation over alleged incidents of misconduct.
- C. To protect the employee against false allegations of misconduct. This can only be accomplished through a consistently thorough investigative process.
- D. Removal of unfit personnel from the department. Personnel who engage in serious acts of misconduct, or who have demonstrated they are unfit for Fire Department assignments must be removed for the protection of the public, the department and other employees.
- E. To improve the efficiency of the Fire Department and its personnel. Occasionally, personnel investigations disclose faulty procedures that would otherwise have gone undetected. The procedures can then be improved or corrected.

504.05 Policy

- A. Complaints to be investigated by the Internal Investigation Section are alleged or suspected violations of statutes, ordinances, and/or the department's procedures and policies by members, including:
 - 1. Those reported to or observed by supervising or commanding officers, by citizens or members of the department, either orally or in writing
 - 2. Complaints referred by the Cincinnati Police Department, or any other public agency.
 - 3. As directed by the Fire Chief.

504.07 Disciplinary Process

- A. Any member of the Fire Department becoming aware of, or receiving a complaint regarding any infraction of departmental procedures, or violation of City Ordinance, State Law, or Personnel Policies and Procedures of the City of Cincinnati, shall report such conduct.
- B. A member of the department receiving a complaint of, or becoming aware of any infraction or violation by department personnel shall not discuss such information with anyone except their supervisor and the Internal Investigation Unit. (Ref: 103.03 (B) Ohio Revised Code)
- C. A supervisor receiving information from a citizen concerning alleged misconduct by a member, uniformed or civilian, shall conduct a preliminary investigation, if practical.

If there appears to be justification for the complaint, the supervisor shall record the complaint on a Citizen's Complaint Form (F-273). The supervisor's portion of the Citizen's Complaint Form shall outline the allegations, identifying principals and witnesses, and provide information developed as a result of any preliminary investigation.

A notation of the receipt of a complaint shall be placed in the daily activity section of the company's desk diary, including company's disposition of it.

- D. A supervisor may initiate a request for disciplinary action or a request for an investigation as a result of personal knowledge or information from another source. In such cases, the request will be routed through the normal chain of command unless such routing would jeopardize the information or investigation. In such instances, the requests may be given directly to any person in the chain of command.

- E. Any member who is the subject of a formal investigation shall be notified of the investigation by the Internal Investigation Section, unless such notification would jeopardize and/or hinder the investigation. In addition to notifying the member who is the subject of the investigation, the Internal Investigation Section will notify the member's District Chief, unless such notification would jeopardize and/or hinder the investigation.
- F. At the direction of the Fire Chief or Human Resources Assistant Chief, the complaint may be investigated by either the Internal Investigation Section or the alleged infractor's District Chief.
- G. In any interrogation conducted by the Fire Department Internal Investigation Section, the accused member shall have the right to tape record the entire interrogation, including comments prior to and following the actual questioning. The interrogation shall not be unreasonably delayed because of the request for a tape recording.
- H. Upon completion of the investigation, the investigating officer will prepare a report detailing the findings. The report will include recommendations for the type of closure.
- I. When a serious charge is made by a civilian against a member, the civilian may be asked to submit to a polygraph examination to substantiate the charges. In the event that the examination is given to the citizen, and in the opinion of the polygraph examiner, the citizen is not telling the truth, no further action should be taken against the member, provided that the citizen is the only complainant and there is no other evidence.
- J. Any member who is charged with a violation shall be allowed to submit to a polygraph examination, if member so desires.

504.09 Questioning Members

- A. A member must, upon direction of the Fire Chief or his designated representative, respond completely and truthfully to all questions that are specifically, directly and narrowly related to the performance of his/her official duties as a Fire Department Employee. The member is not being required to waive his/her constitutional privilege against self incrimination, but is presumed to have asserted the privilege; the member's enforced answers to subsequent questions renders the member immune, under the decision of the courts, in any subsequent criminal proceedings from the use, directly or indirectly, of his/her answers or the fruits thereof. The response to such questions may be used in the application of administrative justice.

- B. Should the member fail or refuse to respond completely and truthfully to all questions of this nature directed to him/her as a member of the Fire Department, such refusal or failure to respond will result in the pursuit of disciplinary action against the member for failure to obey an order. That disciplinary action may result in administrative sanction against the member which may include dismissal from his/her employment as a member of the Cincinnati Fire Department.

504.11 Procedure for Administrative Hearings

- A. The Fire Chief shall designate a Department Hearing Officer, and alternate Hearing Officers. The Hearing Officer and alternates will conduct all Disciplinary Hearings held within the department, except when to do so, would be a conflict of interest. In such case, the Fire Chief will designate the Hearing Officer or will conduct the hearing.
- B. Under ordinary circumstances, the accused member will be served a copy of the Charge Sheet at least 3 tours for 48hr personnel or 5 working days for 40hr personnel prior to the hearing date, indicating the charges preferred, and a basic statement of the facts causing the charges to be filed. The location, date, and time of the hearing will be included in the form. The Internal Investigations Section is responsible for preparing and serving the charge sheet.
Local #48 of the IAFF will also be given a copy of the charge sheet.
- C. It is not necessary to prepare formal charges and conduct a formal hearing if the hearing can be dealt with by issuing a written reprimand.
- D. The subject of an investigation which results in a disciplinary hearing, or their designated representative, shall have the right to obtain a copy of any written or recorded statements the subject has given which are to be used in the disciplinary hearing, provided they make a written request for such a copy prior to the hearing. The employee and/or their representative shall be provided a reasonable time after receiving the statement to review materials prior to the hearing.
- E. Any member of the department who is required to appear at any hearing in their own defense may select representation by the Union as established under the collective bargaining agreement, and/or an attorney to accompany and represent them. However, any person who is required to participate in the hearing in any other capacity is prohibited from participating as the representative of an employee who is the subject of the disciplinary hearing. If the accused member desires to waive their right to legal representation and/or to present witnesses, they will be requested to sign a form indicating a waiver of those rights.
- F. Any member being the subject of any hearing may have witnesses appear on their behalf. Also, any matter of mitigation may be presented to the Hearing Officer.

- G. The hearing will begin with a prepared statement being read concerning the authority and purpose of conducting the hearing. The charge sheet with specifications against the accused will be read into the record.
- H. The following statement will be read prior to Administrative Hearings:
- “This hearing is convened under authority of City of Cincinnati Personnel Rule 5.2. The purpose of this hearing is to provide due process notice to the member against whom charges have been placed. The member shall be given notice of the charges against him or her, notice of the substance thereof, and an opportunity to respond.”

The formalities of courtroom proceedings shall not apply.

Any questions will be resolved by the Hearing Officer.

- I. The Hearing Officer will be permitted to question any witnesses and to call or recall any witnesses as he may see fit. After all witnesses have been heard, exhibits examined and any mitigation offered, the hearing will be closed and the Hearing Officer will deliberate and come to a decision.

The Hearing Officer may make one of the following findings:

1. The complaint is not sustained
 2. Evidence sustains the allegations, and the disciplinary process shall proceed.
- J. If the Hearing Officer determines that the charges are not sustained, no further action will be taken, subject to review and approval by the Fire Chief. This does not preclude counseling and/or training of a non-punitive nature.
- K. If the Hearing Officer sustains the charge(s), recommendations for either corrective measures or disciplinary action will be made to the Fire Chief.
- L. If the decision of the Hearing Officer is that the evidence sustains the charge, the recommended penalty, exclusive to the Hearing Officer and pending final approval, will not be disclosed to the employee who is being disciplined until the completion of the review process and final approval of the City Manager.
- M. The Hearing Officer will cause a report of the results of the hearing to be made in writing. The report must contain the following:

Time and date of the Hearing

Location of the Hearing

A list of those present at the hearing, including the identity of the person representing the employee

If the employee is not represented a statement from the employee acknowledging their waiver of representation.

A statement from the supervisor documenting the charges

A statement from the employee, should they wish to make a statement concerning the charges

The resolution of the charges and recommendations

- N. The Internal Investigation Section will ensure the execution of the necessary documents and serve them on the member and also, when required, provide a copy to the Union Steward.

The Internal Investigation Section will advise the member and his/her District Chief of the sanctions imposed. The member's District Chief will advise the Internal Investigation Section at the time the stipulated penalty has been completed wherein the Internal Investigation Section will notify the Human Resources Division Assistant Chief.

- O. A written or audio record of all hearings conducted within the Fire Division will be made and kept on file for the current year plus 5 years. The record will be stored at the office of the Internal Investigation Section.

504.13 Responsibilities and Procedures of the Review Panel

- A. Consult the current Labor/Management Agreement.

504.15 Temporary Relief from Duty or Suspension

- A. A supervisor may, for a period not to exceed the member's regular or remaining tour of duty, temporarily relieve from duty a member under their supervision on the grounds that the member is unfit for duty. Unfit for duty may include any physical or mental condition which might, in the judgement of the supervisor, render the member incapable of adequately performing duties; or performing them in such a way as to embarrass or discredit the department, or jeopardize the safety of any person or property.

The supervisor shall notify the affected member's Company Commander as soon as possible. The member's Bureau Chief or the Duty Chief will also be notified. The member will be carried on the personnel report as "Sick with Pay".

- B. The Fire Chief or Assistant Fire Chief may suspend an employee, pending review by the Director of Safety, based on the severity of the infraction, safety of the public, or potential for jeopardizing the reputation or objectives of the Fire Department.

504.17 Appeal

- A. Any member of the department may appeal disciplinary action in accordance with the current Labor/Management Agreement and the rules of the Civil Service Commission.

504.19 Investigation of Chief Officers

- A. The Commander of the Internal Investigation Section may be used to conduct investigations of allegations or charges involving Assistant Chiefs and District Chiefs.
- B. The City Manager will investigate allegations or charges involving the Fire Chief.

504.21 Interference with Investigation

- A. No city employee or any person contracting in writing with the city shall prevent, obstruct or otherwise hinder any investigation conducted by the OMIC (Office of Municipal Investigation Cincinnati), the Cincinnati Fire Department Internal Investigation Unit, or the Fire Chief. Any violation of this paragraph may give good cause for or constitute a ground for reduction in pay, suspension, removal or any other administrative disciplinary action in accordance with section 124.34 of the Ohio Revised Code, the rules of the Cincinnati Civil Service Commission, city's policies and procedures, or the Cincinnati Fire Department Procedures relating to disciplinary action.
- B. The city employee shall have the right to appeal from such disciplinary action as provided by law, the rules of the Cincinnati Civil Service Commission and such other rights provided by the city's personnel policies and procedures relating to the disciplinary action.