

Department of the Interior Law Enforcement Policy

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Series: Law Enforcement and Security

Chapter 26: Internal Affairs

Originating Office: Office of Law Enforcement and Security

26.1 Purpose. This chapter sets forth policy for the establishment of Internal Affairs (IA) units to investigate specific categories of alleged criminal acts or misconduct among specified Department of the Interior (Department / DOI) personnel.

26.2 Scope. This policy applies to all bureau/office law enforcement programs of the Department.

26.3 Authority. This policy is issued pursuant to 112 DM 17 and 212 DM 17.

26.4 Responsibilities.

A. Director, Office of Law Enforcement and Security (OLES) is responsible for policy development, program guidance and oversight of the Department's law enforcement programs.

B. Bureau Directors of Law Enforcement (BDLE) are responsible for promulgating and complying with any counterpart policies or procedures as required by this chapter.

26.5 Definitions. For the purpose of this chapter, the terms below are defined as follows:

A. Administrative Investigation: An investigation related to the non-criminal conduct, actions, or performance of an employee to determine whether such conduct, actions, or performance is in compliance with Departmental, bureau or office policies or codes of conduct.

B. Complaint: An allegation of specific wrongful acts or omissions by an employee.

C. Early Intervention System: A system designed to track complaints for purposes of identifying potentially problematic patterns of behavior among Department law enforcement personnel. The system is intended to provide supervisors with the information necessary to take preemptive non-disciplinary action (e.g., counseling, training) to correct performance problems.

D. Misconduct: An act or omission by an employee which serves as the basis for taking corrective action when it is determined that such action will promote the efficiency and integrity of the Department consistent with Departmental Manual, 370 DM 752.1, "Discipline and Adverse Actions". Racial Profiling: The practice of relying, to any degree, on race, ethnicity, or national origin in identifying individuals subject to routine investigatory activities, or in determining the scope and substance of law enforcement actions following a routine investigatory activity.

E. Supervisor: Any law enforcement or non-law enforcement employee of the Department who has direct operational authority over law enforcement personnel.

26.6 **Policy.** Each bureau/office with responsibility for law enforcement personnel will establish an IA unit to investigate alleged criminal acts or misconduct in accordance with these minimum requirements.

26.7 **Standards.** Bureau/office IA policies and procedures will meet the following minimum requirements:

A. IA Unit Staffing.

(1) Each IA unit will have a minimum of one supervisory criminal investigator (GS-1811) exclusively assigned to manage or conduct IA investigations.

(2) Full-time IA unit investigative and support staffing levels will be commensurate with unit caseload.

(3) Bureau and office sworn law enforcement personnel may, as a collateral duty, be assigned to conduct IA investigations on behalf of an IA unit.

B. IA Training.

(1) Within one year of being assigned to an IA unit, all full-time IA investigators will successfully complete:

(a) the Federal Law Enforcement Training Center Criminal Investigator Training (CITP) program, and the Federal Law Enforcement Center, the Internal Affairs Investigations Training Program or an equivalent training program approved in writing by the Director, OLES; and,

(b) a specialized IA investigations training course approved in writing by the Director, OLES.

(2) All sworn law enforcement personnel assigned to conduct IA investigations as a collateral duty will successfully complete a specialized IA investigations training course approved in writing by the Director, OLES. Law enforcement personnel or supervisors non-routinely conducting administrative investigations referred by IA units are not required to complete this training, however a full-time IA investigator must remain responsible for overall case management.

C. Bureau / Office IA Unit Responsibilities.

(1) The primary focus of bureau/office IA units will be the investigation of alleged criminal acts or misconduct by Department law enforcement personnel or supervisors with operational authority over Department law enforcement personnel.

(a) A bureau/office head may direct an IA unit to investigate alleged criminal acts or misconduct by non-law enforcement personnel or supervisors that do not work under the operational authority of law enforcement personnel. Any such investigation will be conducted in accordance with bureau/office policy and coordinated, as appropriate, with the Office of Inspector General (OIG).

(b) The Bureau of Indian Affairs (BIA) IA unit will investigate allegations of misconduct among tribal law enforcement or corrections staff receiving funding or authority from the BIA.

(2) Bureau/office IA units will review all complaints received and investigate those categories of incidents and complaints outlined in Appendix 1 or refer the complaint for investigation by a supervisor or other legal authority as appropriate.

(a) When a determination is made to refer a complaint to a supervisor for investigation, the bureau/office IA unit will maintain oversight of the investigation until it is completed.

(b) If it is determined a category of complaint exceeds the investigative jurisdiction of the bureau/office IA unit (see Appendix 2), the complaint will be referred to the appropriate investigating party.

(3) BDLEs of each bureau will when feasible, locate IA unit offices remotely from other bureau administrative or law enforcement offices and functions. This provides the subjects, complainants and witnesses a measure of anonymity when dealing with internal investigations.

D. OLES Responsibilities.

(1) IA Case Tracking and Oversight.

(a) The OLES will maintain a secure, computer-based IA Case Tracking System (IACTS) which bureau/office IA units will utilize to report complaints and associated investigative dispositions. As this is a law enforcement tracking system, cases that do not involve law enforcement personnel or their supervisors will not normally be tracked by IACTS. Those cases are referred to Human Resources officials for investigation.

(b) OLES will utilize the IACTS to facilitate: referral of complaints to the appropriate investigative authority; aid in the tracking of IA investigations; produce statistical reports for the OIG; and, identify potential issues affecting procedures, training, or policy on a Department-wide basis.

(c) OLES will periodically inspect bureau/office IA units to evaluate compliance with policy requirements related to complaints, investigations, reporting, records management, staffing and training.

(2) IA Investigations. OLES may assume or participate in IA investigations:

(a) when directed by the Secretary or designee,

(b) when requested by the OIG, or

(c) when requested by a BDLE, or

(d) when the Director, OLES, in consultation with the OIG, or the BDLE, as appropriate, determines such assumption or participation to be in the best interests of the Department.

E. General Procedures.

(1) Complaint Filing Procedures. Each bureau/office will establish a complaint initiation process. Information regarding this process will be made readily available to employees and the public and may be disseminated via public websites, informational literature, internal instructional memoranda, annual all-employee training, etc. Information disseminated will include:

(a) Procedures for initiating or filing a complaint.

(b) Confidential reporting system with no supervisory review required.

(c) An overview of the complaint review process.

(d) Contact information for the bureau/office IA unit and the OIG.

(2) Complaint Processing and Tracking.

(a) All complaints will be accepted and reviewed regardless of complainant status (i.e., identified or anonymous) or submission method (e.g., in person, written, telephonic, electronic).

(b) All complaints documented by supervisors will be forwarded to bureau/office IA units no later than seven calendar days from receipt.

(c) Upon receipt of a complaint, the bureau/office will provide written notification of receipt, if known, to the complainant in a timely manner.

(d) All bureau/office IA units will utilize the IACTS to report complaints.

(i) Bureau/office IA units will input complaints into the IACTS within five calendar days of receipt.

(e) Bureau/office IA units will complete investigations within 90 days of receipt of a complaint.

(i) For OIG referred complaints, requests for investigative extensions beyond 90 calendar days will be made directly to the OIG.

(ii) For non-OIG referred complaints, requests for investigative extensions beyond 90 days will be made through IACTS and will include a case status report and justification for the extension.

(f) All bureau/office IA units will utilize an early intervention system to track complaints for purposes of identifying potentially problematic patterns of behavior among Departmental law enforcement personnel.

(3) Complaint Adjudication.

(a) All bureau/office IA units will utilize IACTS to report complaint investigative dispositions.

(b) The following disposition classifications will be used to adjudicate all complaints.

(i) Sustained. There is sufficient evidence to justify a reasonable conclusion of misconduct.

(ii) Not Sustained. There is insufficient evidence to either prove or disprove the allegations.

(iii) Exonerated. The incident occurred but was lawful and within policy.

(iv) Unfounded. The allegation was false or not factual.

(v) Other. There is administrative or legal justification for the incident.

(4) Disciplinary Actions.

(a) Bureau/office IA units will utilize IACTS to report disciplinary actions taken in response to sustained IA complaints. Bureaus/offices will notify the Director, OLES within seven calendar days when they suspend or revoke a law enforcement officer's commission as a result of disciplinary action.

(b) Bureaus/offices will ensure the Bureau Security Officer is notified of sustained IA complaints with potential to affect the security clearance of Department law enforcement personnel or supervisors of law enforcement personnel, in accordance with the requirements outlined in Departmental Manual, 441 DM 2, "Personnel Security and Suitability Requirements".

(c) Bureaus/offices will coordinate disciplinary actions related to sustained IA complaints with their respective Human Resources Office and apply the policies and procedures set forth in the DOI “Handbook on Charges and Penalty Selection for Disciplinary and Adverse Actions”, 370 DM 752. This resource can be accessed at the Office of Human Resources Policy Guidance section at <http://www.doi.gov/hrm/guidance/curronly.htm>.

F. Investigative Considerations.

(1) IA investigations will comply with the “Quality Standards for Investigations” (January, 2012) issued by the President’s Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency. This resource can be accessed at the Federal Inspectors General *IGnet* web site at <http://www.ignet.gov/pande/standards1.html>.

(2) The investigation of all complaints will be conducted in a diligent and thorough manner to ensure pertinent issues are resolved and all appropriate criminal, civil, or administrative remedies are considered.

(3) If, during an administrative investigation, evidence of criminal misconduct is uncovered, investigators will stop the administrative investigation and consult with the U. S. Attorney's Office.

(4) Where an allegation of officer misconduct involves a possible violation of criminal law under investigation by another entity, the IA investigator will consult with prosecutorial offices at federal, state, local, and tribal levels as applicable to determine if an administrative investigation can or should be conducted simultaneously.

(5) In cases where an employee is interviewed, they will be advised of the nature of the investigation prior to any questioning.

(6) Prior to questioning, an employee has the right to be informed of their status (complainant, subject of investigation, or witness to investigation) as it relates to the investigation.

(7) As appropriate, investigators will communicate applicable legal warnings to persons being questioned. See Appendix 3. An employee may have access to specific information concerning an investigation via the “Freedom of Information Act”, 5 U.S.C. §552, the “Privacy Act of 1974”, 5 U.S.C. §552a, employer-employee contact, or grievance procedures. Any disclosure of information should be consistent with these statutes and procedures.

(8) Certain groups of employees may be represented by collective bargaining units. Labor-management agreements between these groups and the Department may afford certain rights and privileges to employees that IA investigators should be aware of prior to initiating employee interviews.

(9) In addition to rights and privileges afforded via labor-management agreements, some groups may have rights and privileges conferred by statute. For example, the “Weingarten Act” (5 U.S.C. §7114(a) provides the right to have “an exclusive representative of an appropriate unit in an agency ... be given the opportunity to be represented at...any examination of an employee in the unit by a representative of the agency in connection with an investigation if... the employee reasonably believes that the examination may result in disciplinary action against the employee, [or] the employee requests representation.”.

G. Reporting.

(1) Investigative reports and files will contain appropriate documentation sufficient to support report findings, conclusions, and investigative accomplishments.

(2) The report will consist of a description of the alleged criminal acts or misconduct, other misconduct identified, and a summary analysis of all relevant evidence and investigative findings.

(3) Upon completion of investigations referred to supervisors, all files, documents, and evidence related to the investigation will be forwarded to and maintained by the bureau/office IA unit in accordance with applicable records retention policy.

(4) All investigative files will be forwarded by the bureau/office IA unit through the appropriate chain of command for review.

H. Records Management.

(1) IA files and related information will be physically separated from other investigative records. Information in these files is considered confidential and will be retained in a secure area under the control of the bureau/office IA unit with access limited for official purposes, and consistent with applicable laws and procedure.

Appendix 1

Bureau/Office IA Compliant Investigation Categories

- Intentional or unintentional discharge of a firearm (excluding non-injury discharges during training, recreational shooting activities, and authorized administrative uses such as the dispatch of wildlife).
- Death or serious injury to persons in the custody or control of Department law enforcement personnel or corrections staff.
- Alleged illegal use of controlled substances.
- Willful or negligent making of an untruthful statement of any kind in any written or oral report pertaining to a Department law enforcement officer's official duties, or making any untruthful statement before any court or to any authorized Government official.
- Arrest of Department law enforcement personnel.
- Acceptance of money, gratuities, or other considerations contrary to Department or bureau/office rules and regulations.
- Failure of Department law enforcement personnel to report misconduct by any other employee.
- Interference with the case of another Department law enforcement officer without proper authority.
- Neglect of duty (excluding general activities subject to direct supervisor oversight and discipline under that authority).
- Any use of force complaint.
- Misuse of a government vehicle.
- Any violation of Department or bureau/office ethics policy.
- Racial profiling allegations.
- Intoxication or consumption of alcohol or drugs while on duty.
- Disclosure of information that may adversely impact any civil or criminal litigation.
- Misuse of government equipment, including computers.
- Any complaint deemed appropriate by the bureau/office head or BDLE.

Appendix 2

Other Investigating Authorities

There are specific categories of complaint that may exceed the investigative jurisdiction of a bureau/office IA unit, or that investigative responsibilities are vested in part with other parties internal and external to the Department. These categories of complaint include the following:

- Violations of the Hatch Act, the Whistleblower Protection Act (5 U.S.C. §1212), and specific prohibited personnel practices (5 U.S.C. §2302 (b)), are investigated and prosecuted by the Office of Special Counsel;
- Complaints of employment discrimination are investigated by the Department's Equal Employment Opportunity Office and adjudicated by the Equal Employment Opportunity Commission;
- Grievances and appeals of adverse personnel actions may be handled by bureau/office human resource offices and are adjudicated by the Merit Systems Protection Board;
- Health and safety violations at the workplace are investigated by the Occupational Safety and Health Administration; and,
- Complaints alleging civil rights violations are investigated by the Federal Bureau of Investigation and the United States Attorney's Office, Civil Rights Division.

The OIG is responsible for investigating or arranging for the investigation of complaints concerning potential fraud, waste, abuse, or mismanagement in Department programs or operations, to include serious matters capable of compromising the Department's mission or otherwise threatening the integrity of Department programs. These categories of complaint include the following:

- Allegations of fraud, waste, abuse, or mismanagement resulting in a significant monetary loss to the Government;
- Misconduct by employees with access to, or responsibility for, monies or financial systems, regardless of dollar amount and grade level;
- Allegations involving contractors, grantees, or any other parties doing business with, making payments to, or receiving funding from the Department;
- Any information, allegation, or complaint that gives the appearance of fraud, waste, abuse, or inefficiency in Department programs or operations;
- Allegations involving misconduct by supervisory personnel, regardless of grade.

- Allegations against employees at grade GS-15 and above;
- Allegations of felony criminal misconduct or domestic abuse by Department law enforcement personnel; and,
- Serious complaints against Department law enforcement personnel or supervisors with oversight of law enforcement programs.

Appendix 3

Internal Affairs Investigations – Legal Warnings

- **Garrity Warning (Voluntary Warning).** For the purpose of Departmental policy and in conjunction with DOJ guidelines, the Garrity warning is given when an employee is not in custody but is being questioned about matters that could result in criminal prosecution. In a memorandum from Assistant Attorney General Christopher A. Wray to all Federal Prosecutors, dated May 6, 2005, “the agents should provide the employee with an advice of rights form that is designed to preserve the government’s ability to use the employee’s statements by advising the employee that the interview is voluntary and that the employee will not be disciplined solely for refusing to answer questions.” Although this is not the true nature of Garrity, DOJ wishes to preserve statements and evidence until such time they deem “use immunity” may be given in the form of Kalkines Warnings or Compelled Warnings.

Suggested Garrity or Voluntary warning:

Warnings and assurances to employee requested to provide information on a voluntary basis

You are being asked to provide information as part of an investigation being conducted by Office/Unit/Bureau name into alleged misconduct or improper performance of official duties concerning [description of relevant incident].

This is a voluntary interview. Accordingly, you do not have to answer questions. No disciplinary action will be taken against you solely for refusing to answer questions.

Any statement you furnish may be used as evidence in any future criminal proceeding or bureau/agency disciplinary proceeding, or both.

Acknowledgement

I understand the warnings and assurances stated above and I am willing to make a statement and answer questions. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Office/Unit/Bureau Investigator

Employee

Witness: _____

Date: _____

Time: _____

Location: _____

- **Kalkines Warning (Compelled Warnings).** The Kalkines warning is given when an employee is compelled to provide information during an administrative investigation with existing or potential criminal and administrative consequences. (Kalkines v. United States, 200 Ct.Cl. 570 (1973)). This warning amounts to a “use immunity” for any act or omission revealed in the interview. Because the authority to grant use immunity lies with the Department of Justice, no IA investigator may give an interviewee a Kalkines warning, formal or informal, written or verbal, without first receiving a verbal or written declination from the appropriate U.S. Attorney’s Office. Not all employee interviews warrant a Kalkines warning. This type of warning is only necessary when the investigator wishes to compel the interviewee to make a statement and failure to make a statement may result in disciplinary action. It is important to note that if even if Kalkines warnings are given, an individual may be subject to criminal prosecution for making false statements pursuant to 18 U.S.C. §1001.

Suggested Kalkines or Compelled Warning:

Warnings and assurances to employee required to provide information

You are being asked to provide information as part of an investigation being conducted by the Office/Unit/Bureau name into alleged misconduct or improper performance of your official duties. The investigation involves the following: [description of relevant incident]

The purpose of this interview is to obtain information which will assist in the determination of whether administrative action is warranted.

You are going to be asked a number of specific questions concerning the performance of your official duties.

You have a duty to reply to these questions, and agency disciplinary action, including dismissal, may be undertaken if you refuse to answer, or fail to reply fully and truthfully.

The answers you furnish and any information or evidence resulting there from may be used in the course of civil or administrative proceedings.

Neither your answers nor any information or evidence which is gained by reason of such statements can be used against you in any criminal proceedings, except that if you knowingly and willfully provide false statements or information in your answers, you may be criminally prosecuted for that action.

ACKNOWLEDGEMENT

Office/Unit/Bureau Investigator’s
Signature

Employee's Signature

Witness: _____

Date: _____

Time: _____

Location: _____

- **Weingarten Rights:** Weingarten rights guarantee an employee the right to union representation during an investigatory interview. These rights, established by the Supreme Court in 1975 in the case of NLRB v. J. Weingarten Inc. must be claimed by the employee. The supervisor has no obligation to inform an employee that they are entitled to union representation.

What is an Investigatory Interview?

An investigatory interview is one in which a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend their conduct. If an employee has a reasonable belief that discipline or discharge may result from what they say, the employee has the right to request union representation.

Examples of such an interview are:

1. The interview is part of the employer's disciplinary procedure or is a component of the employer's procedure for determining whether discipline will be imposed.
2. The purpose of the interview is to investigate an employee's performance where discipline, demotion or other adverse consequences to the employee's job status or working conditions are a possible result.
3. The purpose of the interview is to elicit facts from the employee to support disciplinary action that is probable or that is being considered, or to obtain admissions of misconduct or other evidence to support a disciplinary decision already made.
4. The employee is required to explain their conduct, or defend it during the interview, or is compelled to answer questions or give evidence.

It is an obligation of the union to educate bargaining unit employees about their Weingarten rights **BEFORE** an occasion to use them arises. An employee must state to the employer that they want a union representative present. The employer has no obligation to ask the employee if they want a representative.

Weingarten Rules

When an investigatory interview occurs, the following rules apply:

Rule 1 - The employee must make a clear request for union representation before or during the interview. The employee can't be punished for making this request.

Rule 2 - After the employee makes the request, the supervisor has 3 options. They must either:

- a. Grant the request and delay the interview until the union representative arrives and has a chance to consult privately with the employee: or
- b. Deny the request and end the interview immediately; or
- c. Give the employee a choice of: 1) having the interview without representation or 2) ending the interview.

Rule 3 - If the supervisor denies the request and continues to ask questions, this is an unfair labor practice and the employee has a right to refuse to answer. The employee cannot be disciplined for such refusal but is required to sit there until the supervisor terminates the interview. Leaving before this happens may constitute punishable insubordination.

Union Representative's Rights Under Weingarten

You are not required to merely be a 'silent witness'. You have the right to:

1. be informed by the supervisor of the subject matter of the interview
2. take the employee aside for a private conference before questioning begins
3. speak during the interview
4. request that the supervisor clarify a question so that what is being asked is understood
5. give employee advice on how to answer a question
6. provide additional information to the supervisor at the end of the questioning

You do not have the right to tell the employee not to answer nor, obviously, to give false answers. An employee can be disciplined for refusing to answer questions.

A standard statement to suggest to members is:

"If this discussion could in any way lead to my being disciplined or discharged, request that my union representative be present at the meeting. Without representation, I choose not to answer any questions."

The employer will be ordered to cease and desist and to post a notice. Discipline that is imposed for insisting on Weingarten rights will be overturned. Discipline will not be overturned if the discipline was for reasons other than insistence on Weingarten rights. Although information gained by the employer from the employee in a meeting during which a breach of Weingarten rights occurred, may be excluded from a hearing on the matter.

An employee has NO right to the presence of a union representative where:

1. The meeting is merely for the purpose of conveying work instructions, training, or communicating needed corrections in the employee's work techniques.
2. The employee is assured by the employer prior to the interview that no discipline or employment consequences can result from the interview. The employer has reached a final decision to impose certain discipline on the employee prior to the interview, and the purpose of the interview is to inform the employee of the discipline or to impose it.
3. Any conversation or discussion about the previously determined discipline which is initiated by the employee and without employer encouragement or instigation after the employee is informed of the action.

Even in the above four (4) circumstances, the employee can still ask for representation. Most employers will permit a representative to attend even when not required to.

Miranda Warning. The Miranda warning is given prior to questioning an individual in custody concerning alleged criminal conduct. (Miranda v. Arizona, 384 U.S. 436 (1966)).

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to consult with an attorney and to have them present with you during questioning.

If you cannot afford an attorney and want one, one will be appointed to represent you prior to any questioning.

If you wish to answer questions now, you will still have the right to stop answering at any time.

Waiver

Do you understand your rights? YES _____

Signature

Are you willing to waive these rights and answer questions? YES _____

Signature

Office/Unit/Bureau Investigator

Witness: _____

Date: _____

Time: _____

Location: _____