

**ESTABLISHING A FAIR AND EFFECTIVE FORMAL DISCIPLINARY
INVESTIGATION PROCEDURE FOR THE BRYAN FIRE DEPARTMENT**

LEADING COMMUNITY RISK REDUCTION

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Abstract

The problem was that no formal disciplinary investigation procedure existed for the Bryan Fire Department. Due to recent arbitration hearings, the Bryan Fire department needed to formalize disciplinary investigation methods to ensure fair and effective disciplinary action and to reduce losses incurred in employee job reinstatements. The purpose of this research was to establish a fair and effective formal disciplinary investigation procedure for the Bryan Fire Department.

During this research, action research methods were used to answer the following questions:

1. What problems exist in current methods of disciplinary investigations in the Bryan Fire Department?
2. How do other fire departments conduct disciplinary investigations?
3. What impact does civil service law have on disciplinary investigations?
4. What methods can Bryan Fire Department use to formalize disciplinary investigations?

Through the methods of literature review, a survey, and personal communications, efforts were made to address every aspect and all ramifications of a comprehensive policy for conducting disciplinary investigations. Information was gathered from other Texas fire departments, Texas Government Codes, related published material, and advice from attorneys and human resources department personnel.

Results obtained showed that Bryan Fire Department was lacking in many areas in how investigations were being performed. Also, through the research, many new issues

and procedures were recognized that would help formalize a disciplinary investigation procedure.

In addition to implementing a formal disciplinary policy, recommendations were made to make changes to current policies on how informal counseling is documented and to establish a formal policy on firefighter rules of conduct. Also, it was recommended that a timeline be established for implementation of all new policies and changes as well as an on-going review of effectiveness.

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Introduction

The problem is that no formal disciplinary investigation procedure exists for the Bryan Fire Department. Due to recent arbitration hearings, the Bryan Fire Department must formalize disciplinary investigation methods to ensure fair and effective disciplinary action and to reduce losses incurred through employee job re-instatements. The purpose of this research is to establish a fair and effective formal disciplinary investigation procedure for the Bryan Fire Department. Action research will be used to establish the disciplinary investigation procedure.

During this research, action research methods were used to answer the following questions:

1. What problems exist in current methods of disciplinary investigations in the Bryan Fire Department?
2. How do other fire departments conduct disciplinary investigations?
3. What impact does Civil Service Law have on disciplinary investigations?
4. What methods can Bryan Fire Department use to formalize disciplinary investigations?

Background and Significance

The issue of fair and effective disciplinary investigations has become significant recently for the Bryan Fire Department for several reasons. First and foremost, the Fire Chief had recently indefinitely suspended a firefighter for repeated offenses of discourtesy to the public and conduct prejudicial to good order. This same employee had been indefinitely suspended before, and through arbitration his indefinite suspension was reduced to a six (6) shift suspension. When allegations of discourtesy to the public and conduct prejudicial to good order arose again, the incidents were investigated as all other infractions had been with other employees.

During the second arbitration hearing, the disciplinary investigation procedures were targeted by the attorneys for the dismissed firefighter. There were discrepancies noted in how the Bryan Fire Department investigated disciplinary infractions. The arbitrator noted in his ruling statement that the suspended firefighter had indeed violated policies repeatedly, but still re-instated the employee albeit without any back pay.

For the Bryan Fire Department, there are other reasons for our focus on formalizing our disciplinary investigation procedures. Another concern, which is a financial issue, is that entering into arbitration is a very expensive venture for the fire department. When arbitration cases are lost, especially twice with the same employee, it is a significant strain on financial resources due to attorney fees, compensation for lost time, and other associated costs.

Also, anytime there is an arbitration hearing, there will be supporters on both sides of the issues. When the Fire Department loses a hearing, it sends a message that the

employee was wronged by the “system”. It establishes a work environment that leads employees to believe that they can’t be terminated, even if they violate policies. This type of environment can undermine the fire department’s administration and supervisors’ credibility and severely impact morale.

Another reason to formalize and improve the Bryan Fire Department’s disciplinary investigation process is that for many years it has been very frustrating and confusing for supervisors when dealing with disciplinary issues in a fair and consistent manner. Without a written guideline or policy, it was always difficult to know if what was being done was consistent with other disciplinary infractions. This also impacted department morale and organizational equity.

It is imperative to conduct this research and formalize the Bryan Fire Department’s disciplinary investigation procedure to assist supervisors and officers in providing fair and effective disciplinary actions when necessary now and in the future. Also, it will help prevent employee disgruntlement, loss of morale, and supervisor confusion in the future when dealing with disciplinary issues.

This study relates to the course content in unit three of the Leading Community Risk Reduction Course which states:

- Organizational equity is the positive potential for support of the organization’s leadership due to the day-to-day actions of the Executive Fire Officer.
- Organizational equity is developed when the Executive Fire Officer meets the needs of the personnel. When needs are met, a deposit is made to an organizational “savings account”.

By formalizing the disciplinary investigation procedure to ensure fair and effective disciplinary action, employee and supervisor trust can be re-established in the organization.

This study fulfills one of the five operational objectives set by the United States Fire Administration, which is “To respond appropriately in a timely manner to emerging issues” (United States Fire Administration, 2003). This study will assist the Bryan Fire Department in the improvement of disciplinary investigations for the overall betterment of the department.

Literature Review

Research Question #1:

What problems exist in current methods of disciplinary investigations in the Bryan Fire Department?

In reviewing the current Bryan Fire Department discipline policy, the most apparent problem is that no procedures are in place to direct an investigating supervisor how to perform an investigation. The policy states:

Disciplinary action administered by the Department will be determined by the nature and circumstances of the violation and will be consistent with previously imposed sanctions for the type of violation under similar circumstances. Disciplinary action will be based upon the totality of the circumstances, taking into consideration training, experience and any other relevant factors. All incidents which may require disciplinary action will be investigated thoroughly. Due to the nature of our services, complaints from other

agencies and citizens are not unexpected. The department will only investigate written complaints submitted by other agencies and/or citizens.

(Bryan Fire Department, 2004)

An investigating supervisor has no instructions on how to investigate and must rely on past practices for direction.

A review of the arbitrator's ruling in a recent arbitration hearing, revealed discrepancies in current disciplinary investigations. Some of the arbitrator's reasoning involved how the infractions were investigated. "It (the fire department) engaged in overreaching by adding the charge of investigation interference, when no objective review of the facts should support such a charge" (Smith, 2004). While the department felt a charge of investigation interference was substantiated, it failed to prove such facts due to inadequate investigative practices and documentation.

After the arbitration hearing, an email was drafted from Melanie Caballero, Civil Service Director and Director of Human Resources for the City of Bryan, recommending changes to correct deficiencies in current practices of investigating discipline issues. Ms. Caballero recommended the following in her email:

After sitting through the arbitration hearing for Tim Hardy, below are some thoughts/recommendations that I had.

1) Develop a formal investigation process. Possibly appoint someone that would actually conduct the investigations and present findings to chiefs. You could break out the 'less severe' types of actions and have the chain of command handle those. Important thing is to "formalize" the process whatever it may be.

2) Develop training for those who are assigned out-of-class, especially those who step up to a supervisory position. Make it clear what their responsibilities and expectations are...how much power they have, etc. Maybe only allow those that have been trained to be assigned out-of-class.

3) Develop a policy for employees conducting themselves in a professional manner which addresses comments and jokes while at a scene or in the presence of members outside of the department.

4) Hold supervisors accountable. Make them more responsible for their actions. They need to serve as role models and be supportive of your decisions and the department. If they can't, then demote them. (M. Caballero, personal email, January 2, 2004)

Research Question #2:

How do other fire departments conduct disciplinary investigations?

An electronic survey was sent out to approximately 100 fire departments in the state of Texas to solicit input on how other departments conduct disciplinary investigations. The survey asked specific questions on procedural issues for each department surveyed concerning disciplinary actions and investigations. In the survey, it was asked that if a department had a formal policy on disciplinary investigations, could they include it in their response for review.

A review of the survey answers and investigation policies sent gives the Bryan Fire Department an opportunity to see how we compare to disciplinary actions of other departments. The policies received provided much information and guidance in

establishing a formal policy for our use. Some of the issues noted in use in other departments included:

- Who is responsible for investigations
- Interviewing witnesses
- Documentation of interviews
- Employee notification of pending investigation
- Documentation of all disciplinary action
- Rules of conduct for employees
- Handling citizen complaints

In many of the departments surveyed, it was recognized that a “Garrity warning” was used during administrative interviews. An internet search was performed using Google to learn the significance of a Garrity warning. According to a website for New Jersey law enforcement personnel:

The basic thrust of the Garrity Rule is that a department member may be compelled to give statements under threat of discipline or discharge but those statements may not be used in the criminal prosecution of the individual officer. This means that the Garrity Rule only protects a department member from criminal prosecution based upon statements he or she might make under threat of discipline or discharge. (njlawman.com, 2004)

Research question #3:

What impact does Civil Service Law have on disciplinary investigations?

The Bryan Fire Department operates under the Texas Local Government Code, chapter 143, Municipal Civil Service. It is imperative for success of a new policy to follow guidelines set forth in civil service.

A comprehensive review of the Texas Local Government Code, chapter 143, subchapter D, was done which pertains to disciplinary actions for sworn firefighters and police officers. The subchapter lists several issues concerning disciplinary actions:

1. Causes For Removal or Suspensions From Duty
2. Disciplinary Suspensions
3. Appeals of Suspensions
4. Demotions
5. Procedures After Felony Indictment or Misdemeanor Complaints
6. Hearing Examiners

(Texas Local Government Code, 2004)

Most of the information in Subchapter D pertains to time frames that must be met for procedural issues. It explains different options that the head of a fire department has to take action on disciplinary matters and options suspended employees have to appeal.

The City of Bryan Civil Service Commission has rules that regulate the fire and police departments as well. These “local rules” take precedence over state rules. A comprehensive review was done on these regulations as well. Article 4 of the City of Bryan Civil Service Commission Rules actually lists several more causes for suspensions, particularly violating city policies and procedures, than state civil service but is verbatim on the remaining portion concerning disciplinary actions.

Neither set of civil service rules addresses how to perform a disciplinary investigation, other than time limits required to report findings to the suspended employee. It is important to note that regardless of the effectiveness of an investigation, if these civil service requirements are not met, the employee can be re-instated to his or her former position. This is stated in section F of chapter 143.052:

“If the department head does not specifically point out in the written statement the act or acts of the fire fighter or police officer that allegedly violated the civil service rules, the commission shall promptly reinstate the person.” (Texas Local Government Code, 2004)

Research Question #4:

What methods can Bryan Fire Department use to formalize disciplinary investigations?

A search was conducted of the National Fire Academy’s Learning Resource Center through the internet for information to properly conduct investigations. As with most of the literature reviewed, much was found on why investigations need to be performed, but not specifically how to conduct them.

In order to protect the interests of the Department and the accused employee, a procedure must be in place. The supervisor must be thoroughly prepared to deal with the situation (investigation) in a forthright manner and in full consideration of the rights of the employee and the organization (Edwards, 2000).

“One of the most important rights for an employee is due process. Managers must ensure that employees who are disciplined receive due process, due process means fair and consistent treatment” (Gomez-Mejia, Balkin, Cardy, 2001).

One of the issues in the recent arbitration hearing was whether the accused employee was aware he was under investigation. The department alleged that he was interfering in the investigation while he claimed he did not know he was under investigation. It is critical to make certain the alleged employee is made aware that he/she is under investigation. “The firefighter or other person involved should be clearly informed that a rule violation is the issue and that disciplinary action might result” (Carter, Rausch, 1999).

Through information gathered through the electronic survey and reviewing other departments’ policies, several issues were recognized that are relevant for the Bryan Fire Department to properly conduct investigations. Also, a personal phone call was made to Julie Gannaway of Lynn, Pham, Moore, & Ross, PC in Fort Worth, Texas for information on how to conduct employee disciplinary investigations. Ms. Gannaway was one of the attorneys representing the City in the last arbitration hearing. Ms. Gannaway stated:

Develop your policy to be instructive on how to do an investigation.

Include and explain the following steps: initiate the investigation as soon as possible, carefully plan the investigation, document your action throughout the investigation, obtain written statements from witnesses and from the employee accused of misconduct, identify the facts, and maintain a complete investigation file.

(J. Gannaway, personal communication, July 8, 2004)

In summary, the literature reviewed provided significant insight on developing a disciplinary investigation procedure. Although there was not much literature found in fire service textbooks on how to investigate, other resources such as attorneys and human resource reference material assisted in covering the subject.

Through the review of other departments' policies and input on how they perform disciplinary action, to recommendations from attorneys and the City of Bryan Human Resources Department, the information obtained proved very valuable in this research project. All of the information was reviewed and applied to what would work best for the Bryan Fire Department.

Procedures

Research Question #1:

What problems exist in current methods of disciplinary investigations in the Bryan Fire Department?

In trying to determine current problems in methods of disciplinary investigations in the Bryan Fire Department, the first step was to analyze any policy or procedure in place and evaluate its effectiveness. At present, the only policy referencing disciplinary action or investigations is Bryan Fire Department Personnel Policy 2.0.12. This policy is available to Bryan Fire Department employees on the City of Bryan's Intranet. The location is on the "R" drive, in the folder titled "policies and procedures" and then in the subfolder titled "personnel policies".

The need for an administrative investigation policy was made apparent after a recent arbitration hearing. An employee had been indefinitely suspended for repeated

acts of discourtesy to the public and conduct unbecoming of a firefighter. While the arbitrator did, in his award and opinion statement, say the employee appeared to be guilty of misconduct, the department failed to prove its case for indefinite suspension. Several issues were addressed in the statement. A copy of the arbitrator's ruling was made available to the department through the attorneys representing the City. The copy was provided by the law firm of Lynn, Pham, Moore, and Ross, PC at 1320 S. University Drive, Suite 720 in Fort Worth, Texas at the time of the arbitrator's decision.

Research Question #2:

How do other fire departments conduct disciplinary investigations?

The first step was to solicit input from other departments in Texas. Our department is governed under Texas Local Government Code 143 (Civil Service). It seemed most logical to survey other Civil Service departments in Texas as well as getting input from non-Civil Service departments as well. To do this, an electronic survey was sent out to approximately 100 fire departments in the state of Texas to solicit input on how other departments conduct disciplinary investigations.

A personal phone call was made to Dr. Jim Gaston, executive director of the Texas Fire Chiefs Association asking for suggestions on how to get my survey out. Dr. Gaston recommended using the "Member Clicks" section of the Association's website. To access the Member Clicks Mothership, he instructed me to go to my.memberclicks.com/txfc. Then he advised to delete the guest login and password. I entered my password that he gave me and entered the website.

Once in the *Directory*, I selected *View All* and then *send email/fax*. Under *Use Recipient's preferred contact* method, I then selected *email*. After entering a subject, I cut and pasted my survey in the text box and clicked *send*.

The survey asked specific questions on procedural issues for each department concerning disciplinary actions and investigations (See Appendix A). Out of the approximate 100 departments surveyed, 55 responses were received via email.

Research question #3:

What impact does Civil Service Law have on disciplinary investigations?

The Bryan Fire Department operates under the Texas Local Government Code, chapter 143, Municipal Civil Service. A comprehensive review of the Texas Local Government Code, chapter 143, subchapter D, was done which pertains to disciplinary actions for sworn firefighters and police officers. An internet search was done on “Google” to locate the most current version on the Texas Local Government Code. The results of the search showed that Chapter 143 is available online at www.capitol.state.tx.us/statutes/lg.toc.htm. Subchapter 143, Civil Service rules are located at <http://www.capitol.state.tx.us/statutes/docs/LG/content/htm/lg.005.00.000143.00.htm>.

A comprehensive review was done also of the City of Bryan Civil Service Commission Rules, which are almost identical to State rules. These rules were obtained through the City Of Bryan Fire Department Administration office.

Research Question #4:

What methods can Bryan Fire Department use to formalize disciplinary investigations?

In trying to find published resources, a main catalog search was performed in the Sterling C. Evans Library on the campus of Texas A&M University in College Station, Texas, under subject headings in the query of “fire department discipline investigations”. Under these results, a subchapter of “fire department management” was found. In that section was the listing of *Management in the Fire Service* by Harry Carter and Erwin Rausch (Call # TH9158.C37).

Another main catalog search was performed under subject headings in the query of “Human Resource Management”. In the results was listed *Managing Human Resources* by Luis Gomez-Mejia, David Balkin, and Robert Cardy (Call # HF5549.G64)

A personal phone call was made on July 8th, 2004 to Julie Gannaway of Lynn, Pham, Moore, & Ross, PC in Fort Worth, Texas for information on how to conduct employee disciplinary investigations. Ms. Gannaway was one of the attorneys hired by the City to defend the most recent arbitration hearing. It seemed appropriate to solicit input from legal experts who represented the Department. Ms. Gannaway was very helpful in providing various documents to review and answering questions related to such. She recommended many things to consider in developing an investigation policy; the most important was for the policy to explain how to perform an investigation.

Limitations

There were several limitations in the research of fire department disciplinary investigations. First, there was very little information available in fire service management textbooks. Every book that was reviewed discussed why to do investigations, but did not explain how. A search was conducted online of the National Fire Academy’s Learning Resource Center at <http://www.lrc.fema.gov/>. This search did

not provide any assistance as nothing was found to be helpful. Another limitation noted was that most of the fire service textbooks that had information on discipline were not current or recent editions.

Results

Research Question #1:

What problems exist in current methods of disciplinary investigations in the Bryan Fire Department?

As stated earlier, the most obvious problem for the Bryan Fire Department in administering disciplinary investigations is that no guidance exists in formal written policy or text. When a supervisor must investigate misconduct, he/she has no formal procedure to follow. This situation has caused sub-standard disciplinary action in the past.

An extension of that problem is that due to inadequate disciplinary investigations, the City has to re-instate suspended employees who win their arbitration hearings. The costs incurred including legal fees, overtime, and potential back wages can be very significant.

It is also very difficult to promote fair and equitable disciplinary action to supervisors when they have no tool to reference. For some, it is easier to overlook problems than to deal with them accordingly. The morale of the department can be adversely impacted.

Research Question #2:

How do other fire departments conduct disciplinary investigations?

The first step in finding out how other departments conduct disciplinary investigations was to send out a survey to other departments in Texas. The survey solicited input on several different disciplinary and procedural issues. The results of the survey are as follows:

- 76% of the departments who replied to the survey have someone specific who is in charge of disciplinary investigations. Of those departments that do, 17% were the Chief, 21% were an Assistant Chief, 50% were a Battalion / Deputy Chief, or a Captain, and 12% were a front-line supervisor such as a Lieutenant.
- On what determines who will investigate disciplinary matters, 16% responded that the Chief decides, 55% stated that the nature of the infraction determined, 18% said the supervisor, 6% had a policy that dictated such, and 5% relied on their human resource department to decide.
- 57% of departments said they utilize undocumented disciplinary methods such as informal counseling, and 43% said they do not.
- On where documented infractions are kept for future reference, 75% were kept in a personnel file, 21% were kept by the supervisor, and 12% were kept by their Human Resources Department.
- Of the departments that were surveyed, 45% were Civil Service and 55% were not.
- In training of supervisors, 31% relied on their Human Resource Department, 5% used their Legal Department, 27% used outside sources,

10% were trained by the Fire Chief, and 27% did not train supervisors at all in disciplinary investigations.

- Of the departments that were surveyed, 99% had general orders for rules of conduct and 1% did not.
- 36% of the departments had a formal disciplinary investigation policy or procedure and 64% did not.

The survey also asked that if a department had a policy in place for disciplinary investigations to please forward a copy for review which 15 did.

Research Question #3:

What impact does Civil Service Law have on disciplinary investigations?

A comprehensive review of the Texas Local Government Code, chapter 143, subchapter D, was done which pertains to disciplinary actions for sworn firefighters and police officers. Results of this review did not produce many results for establishing a policy for disciplinary investigations. It did however recognize that certain procedures for administering discipline must be followed or even the best investigating procedures can be ignored and the charges against the employee will be dismissed.

The review of chapter 143 provided some considerations for how the department should conduct other aspects of discipline. The implementation of an investigation policy will have many ramifications in how the department handles other issues such as citizen complaints and criminal investigations.

Research Question #4:

What methods can Bryan Fire Department use to formalize disciplinary investigations?

There were many things discovered throughout the review of the survey, other departments' policies, and telephone interviews with attorneys. It was discovered that Bryan Fire Department was lacking in most areas of proper disciplinary methods. Other concerns discovered included court cases (Garrity v. New Jersey) that affects the rights of accused employees and methods of documenting and processing citizen complaints.

In order to adhere to these concerns, new documentation procedures and forms had to be developed (See Appendixes B, C, and D). These forms are standard forms used by many departments. Also, the department can reserve rights to order an employee to undergo polygraph testing if the Chief of the Department deems it beneficial.

Other issues discovered included establishing responsibilities for employees and supervisors, and determining who is responsible for an investigation depending on the nature of the infraction. One of the most important things noted by J. Gannaway was: "The necessity of a thorough, methodical, and well documented investigation procedure. For the sake of the supervisors who must perform investigations, they should be provided with specific instructions on every step of an investigation."

(J. Gannaway personal communication, July 8, 2004)

After review of all resources found, and consideration of the discussion and recommendations made in this study, a policy was developed for the Bryan Fire Department (See Appendix E). It is a compilation of many other departments' policies on discipline and investigations along with many issues specific to Bryan Fire Department. It also consists of many recommendations from the City of Bryan Human Resources Department and attorneys representing the city.

Discussion

In comparing the results of the study to literature reviewed, it is apparent to the author that the Bryan Fire Department must make changes to many aspects of disciplinary methods currently used. Without proper procedures in place, it is difficult for supervisors to have confidence in administering discipline.

To avoid conflict and lawsuits, managers must administer discipline properly. This entails employees receiving due process. Managers need to be aware of the standards used to determine if an employee was treated fairly and whether or not the employee has a right to appeal disciplinary action. For a disciplinary system to be effective, an appeal mechanism must be in place.

(Gomez-Mejia, et al.)

One of the reasons listed for the Bryan Fire Department to formalize a disciplinary investigation procedure is to prevent having to re-instate terminated employees because of a lack of credibility in established procedures. “It’s unfortunate but many defense attorneys seem to spend more time attacking the organization than addressing the merits of their case.” (Edwards, 2000)

In review of other departments’ policies, it became obvious that new issues must be addressed at the Bryan Fire Department that were previously considered unimportant. By making the disciplinary system as comprehensive as possible, it sends a message that the department is properly prepared to deal with infractions and investigations. In a conversation with Ms. Gannaway concerning this she stated, “From a legal standpoint, sometimes the best defense is a good offense”. (J. Gannaway, personal communication, July 8, 2004)

It is the opinion of the author that the results show that the need for a formal disciplinary procedure is very important, just as the reviewed literature indicates. A department that is not prepared to enter into the “legal arena” is setting itself up for failure, both financially and in department credibility.

The implications of the results on the Bryan Fire Department will have a positive effect on the organization in several ways. First, it shows the department is committed to fair treatment and due process by having a formal investigation policy. In the actual policy, it specifies employee responsibilities and rights. It also addresses legal rights afforded employees under criminal investigations by providing Garrity protection.

This should re-establish any credibility the department lost during recent arbitration hearings. Overall morale should improve for both employees and supervisors. Supervisors should be more comfortable knowing a procedure is in place to help them perform stressful investigations.

Recommendations

Based on the review of the information in this study, there are several recommendations to be made. First, the Bryan Fire Department must institute new procedures and modify existing ones to become more proficient in investigating and administering discipline, managing citizen complaints, and addressing current issues in criminal investigations.

The first step would be to develop a formal policy that would be all-inclusive of issues pertinent to the Bryan Fire Department. These issues involve:

- Determining who is in responsible for investigations
- Definitions of official terminology

- Citizens complaints
- Criminal investigations / Garrity warnings
- Employee Rights
- Employee / supervisor responsibilities
- An administrative investigation process
- Disciplinary action
- Confidentiality of investigations and files

Establishing this policy will have several ramifications on the disciplinary process currently used by the Department.

Because of those ramifications, a recommendation is made to change the current disciplinary policy to include documented Informal Counseling, and a new Informal Counseling form (See Appendix F). Currently, Informal Counseling is done by supervisors for very minor infractions. These counseling sessions are not documented and can be disputed later by the employee. Since they are not documented, it is difficult to substantiate. It is recommended that Informal Counseling forms be removed from an employee's file after 12 months if no other similar behavior is noted.

Another recommendation to the Department is to establish a formal policy on firefighter rules of conduct. It should specify what behaviors are unacceptable and what is expected of firefighters on duty and off.

In order for the changes to be successful, the implementation of new policies and procedures should be planned. A target date of implementation needs to be established at least three months in advance. All supervisors will need extensive training in order to become proficient in investigations. Personnel from Human Resources and Legal

Services should be involved to answer any questions. During the training period, as a policy is developed or changed, each one should be sent out to supervisors one at a time for their timely review. If all of the changes are unveiled at once, it may be overwhelming for some supervisors.

After the target date to begin has passed and everyone has received training, each incident of disciplinary action will need to be reviewed to ensure new procedures are followed and to review the effectiveness. Any time discrepancies or problems are noted, they should be analyzed to see if corrections to the disciplinary system would be beneficial. In order for the new procedures to remain effective, close evaluation must occur on a continuous basis.

These recommendations are made to better the Department in its ability to fairly and effectively administer disciplinary action to its employees while protecting its resources formerly lost to disciplinary actions reversed by an arbitrator.

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APPENDIX A

Survey Questionnaire

Does your department have someone specific who is in charge of disciplinary investigations?

If so, what rank are they?

What determines who will investigate disciplinary matters (immediate supervisor, nature of infraction, etc.)?

Does your department utilize any undocumented disciplinary methods such as informal counseling for first offenses?

Where are documented infractions kept for future reference?

Does your department operate under civil service law?

Who trains your supervisors in disciplinary investigations?

Does your department have general orders for rules of conduct?

Does your department have a formal disciplinary investigation policy or procedure?

If so, please provide a copy.

Your name:

Your department:

Address:

Phone number:

Thank you very much for your time and assistance.

APPENDIX B

Bryan Fire Department**Complaint Notification Form**

The filing of a formal complaint against an employee of the Bryan Fire Department by you will institute an administrative investigation which could possibly result in disciplinary action being taken against the employee(s); therefore,

A person who makes a false statement under oath concerning a complaint filed against a law enforcement officer or fire fighter as required by Article 625.20, V.T.C.S., with intent to deceive and with knowledge of the statement's meaning, is guilty of aggravated perjury under Section 37.03 of the Penal Code, if he has knowledge of the content of the complaint, the purpose of its filing, and the official character of the investigation conducted in connection therewith, and in the statement and its material.

I acknowledge that I have read the above, prior to/or at the conclusion of my statement.

Complainant Signature

Complainant Printed Name

Date

Signature of BFD Officer administering oath

Printed name and rank of BFD Officer administering oath

APPENDIX C

**Bryan Fire Department
Complaint Report Form**

Name of Complainant _____

Address of Complainant _____

Date of Complaint: _____

Date of Alleged Occurrence: _____

Approximate Time of Occurrence: _____

Incident Number (if applicable): _____

Nature of Complaint:

Complainant Signature_____
Complainant Printed Name_____
Date_____
Signature of BFD Officer administering oath_____
Printed name and rank of BFD Officer

APPENDIX D
Bryan Fire Department

Garrrity Warning

To be used only when a member is being questioned about possible criminal matters and it has been officially determined that any self-incriminating statements that the member makes will not be used against him in a criminal prosecution.

You are going to be requested to provide information regarding:

This questioning and/or requested information concerns administrative matters relating to the official business of the Bryan Fire Department. You are not being questioned for the purpose of instituting any criminal prosecution against you. During the course of this questioning, even if you do disclose information which indicates that you may be guilty of criminal conduct, neither your self-incriminating statements nor the fruits of any self-incriminating statements you make will be used against you in any criminal legal proceedings.

Since this is an administrative matter, any self-incriminating information you may disclose may not be used against you in a court of law, and you are required to answer the Department's questions fully and truthfully. If you refuse to answer questions, you will be in violation of the rules of this Department, and you will be subject to disciplinary penalties.

Do you understand what was just explained to you? _____

Do you have any questions concerning what was just explained to you? _____

You are now ordered to participate in the investigation of this matter and answer any questions and provide any written statements concerning this investigation as requested by the Department.

Received by me in person at the date and time indicated:

 Recipient's Printed Name

 Recipient's Signature

 Investigator's Signature

 Witness Signature

Date_____

Time_____

APPENDIX E

**BRYAN FIRE DEPARTMENT
POLICIES****SUBJECT:** Administration**POLICY:** Administrative Investigations**CATEGORY:** Administration**ORIGINATION DATE:****REVISION DATE:****PAGE 1 OF 9****Purpose**

This policy establishes guidelines for conducting administrative investigations as necessary to resolve complaints relating to the Bryan Fire Department, its personnel, or its services. Administrative investigations are designed to provide for the protection of the public, department, and employees. Administrative investigations are also intended to provide for the correction of procedural problems and removal of unfit personnel.

The Bryan Fire Department is committed to high standards relating to delivery of services, employee performance and conduct, and public perception of the Department. All employees are responsible for upholding these standards. Employees who tolerate misconduct are, in effect, condoning and participating in this conduct and must share the consequences.

Any person, civilian or employee, who believes that any Bryan Fire Department employee has been involved in improper conduct, has the right to file a complaint. These persons can expect such complaints to be thoroughly and objectively reviewed by the Department. All complaints against the Department or employees of the Department shall be reviewed.

Definitions

For this policy, the following definitions shall apply:

Complaint: An allegation of circumstances amounting to a specific act or omission which if proven true would amount to employee misconduct.

Misconduct: An act or omission by an employee which if proven true would normally result in some form of disciplinary action, sanction, or remediation. Misconduct may include, but is not limited to, the commission of a criminal act, neglect of duty, and violation of Bryan Fire Department policy, procedure, or directive, any Civil Service Rules and Regulations, or City of Bryan Personnel Policy.

Sustained: The evidence supports the allegation of misconduct.

Not Sustained: There is insufficient evidence either to prove or disprove the allegation of misconduct.

Unfounded: The evidence disproves the allegation of misconduct.

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General Provisions

The scope of this procedure shall include all alleged or suspected violations of statutes, ordinances, Department rules, regulations, orders, directives, or procedures by employees of the Bryan Fire Department. Disciplinary investigations will usually be conducted by the supervising Lieutenant if the nature of the incident could potentially lead up to and include a written reprimand. As soon as a Lieutenant is aware of pending disciplinary action, he/she will notify the Battalion Chief on duty. The Battalion Chief may choose to be involved in the investigation if he/she deems it appropriate.

If the nature of the infraction is severe enough to potentially lead to the employee being immediately removed from duty, suspended without pay, demoted, or indefinitely suspended, the Battalion Chief will immediately notify the Assistant Chief of Operations. The Assistant Chief of Operations may become involved in the investigation if he/she deems it appropriate. This could include repeated minor infractions that through progressive disciplinary actions, could lead to suspension without pay, demotion, or indefinite suspension.

On any serious complaint or issue, the Fire Chief will determine who will conduct an investigation. These types of incidents involve:

- Any allegation of criminal activity
- Incidents in which an employee is killed or seriously injured in the line of duty
- Incidents in which a civilian is seriously injured or killed
- Any action that by its nature causes widespread public attention that impacts negatively on the reputation of the Department

Any supervisor receiving a serious complaint or concern shall document the complaint in writing and forward the complaint to the Fire Chief who will (1) review the complaint, and (2) determine whether or not to assign the complaint for an administrative investigation. If an administrative investigation is warranted, the Fire Chief will forward a copy of the complaint to the person assigned to or responsible for the investigation.

This procedure does not prohibit any supervisor from taking appropriate action to resolve situations which are not the result of a formal complaint to the Department. Supervisory review and follow-up of employee performance is an expected and essential component of efficient Department operations.

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Citizen Complaints

It is the obligation of every employee of this Department to treat citizen complaints seriously and to accord any person making a complaint a courteous and professional response regardless of the apparent validity or nature of the complaint itself.

Fire Department employees at all levels should attempt to satisfy the public's questions and concerns immediately; however, should the complainant continue to express dissatisfaction, the complaint should be referred to an appropriate supervisor as follows:

- Complaints during regular office hours will be referred to the employee's supervisor, Battalion Chief, Assistant Chief of Operations, or the Fire Chief.
- Complaints received after hours will be referred to the on-duty Battalion Chief
- If a supervisor is not immediately available; the employee receiving the complaint shall take the complainant's name, address, phone number, and nature of the complaint and forward that information in writing through the chain of command to the Assistant Chief of Operations at the earliest opportunity.
- If the complainant is not comfortable with identifying him/herself to the initial recipient of the complaint, the complainant will be encouraged to contact the office of the Fire Chief by telephone during office hours to discuss the matter. This may provide an opportunity to obtain additional information to assist in any investigation.

Criminal Investigation

The Chief of the Fire Department has the authority to request a criminal investigation by the appropriate law enforcement agency of any allegation of wrongdoing. The criminal investigation may be instead of, or in addition to, an administrative investigation.

The purpose of an administrative investigation is to determine whether the involved conduct or act was consistent with Department policies and procedures or whether criticisms of Bryan Fire Department services are accurate. In *Garrity v. New Jersey*, the U.S. Supreme Court held that refusal by employees under administrative investigation to answer questions or otherwise cooperate with the investigation is grounds for disciplinary action, to include dismissal.

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That decision also states, however, that neither self-incriminating statements, nor the fruits of such statements, made by employees under administrative investigation can be used against the employees in any criminal proceeding. It shall be the policy of this Department to provide a *Garrity* warning to any employee being administratively questioned about matters which potentially involve the commission of a criminal act.

Department employees may assume, unless advised otherwise, that the Department's investigation of allegations is an administrative investigation.

Employee Rights

The following rights and responsibilities will be afforded to and required of any employee of the Bryan Fire Department who is the subject of a complaint:

- The employee will be given a copy of the BFD Complaint Report form.
- Any interview of the employee shall be held at a reasonable time in relation to the employee's work schedule, unless the circumstances of the situation require expediency or delay.
- A Garrity Warning will be provided to any employee questioned by the Department about matters which potentially involve the commission of a criminal act.
- The employee will be advised at the earliest possible opportunity of the results of any investigation and any pending subsequent action to be taken by the Department or the employee.

Employee Responsibilities

Every employee is required to possess a working knowledge of all applicable laws and ordinances in effect in the City of Bryan, and the State of Texas, as well as the policies and procedures of the City of Bryan, the Bryan Fire Department, or any division thereof. In the event of improper action or breach of discipline by a member, it is presumed that member was familiar with the law, rule, procedure, directive, or policy in question.

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It shall be the duty of all members to report to their supervisor whenever they learn of any violation of Bryan Fire Department policy, procedure, or directive, any Civil Service Rules and Regulations, City of Bryan Personnel Policy, and / or local, state, or federal law by any member.

Employees participating in an administrative investigation shall completely and thoroughly answer all questions concerning the case as asked by the investigator. Failure or refusal to answer any questions constitutes grounds for disciplinary action, including dismissal from the Department, as conduct prejudicial to good order and insubordination.

Supervisor Responsibilities

Supervisors will immediately take proper action for violations of Bryan Fire Department policies, procedures, or directives, Civil Service rules and regulations, City of Bryan Personnel policies, or any other rule governing the Bryan Fire Department.

Supervisors who knowingly fail to take official action for violations will be subject to disciplinary action.

Administrative Investigation Process

When an administrative investigation is initiated from an alleged complaint, the employee involved and his/her chain-of-command shall be notified in writing of the complaint within a reasonable time, unless the Fire Chief determines that the notification should be delayed for good cause. In cases where the supervisor witnesses minor misconduct in situations such as tardiness or failing to sign forms, a verbal notification is sufficient from the supervisor to the employee.

Even in the most obvious cases of alleged misconduct, such as tardiness or unauthorized absences, there are often mitigating circumstances which provide a reasonable explanation for perceived violations of policies and procedures. For these very reasons, it is critical that a supervisor thoroughly investigate every aspect of an employee's alleged misconduct. Therefore, before any disciplinary action is taken, it is important for a supervisor to ascertain;

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- Whether the alleged misconduct occurred;
- Whether the accused employee is responsible for the misconduct; and
- Whether the evidence to support the allegations will withstand scrutiny at the disciplinary appeal.

The answers to these relatively basic inquiries should be based on undisputed facts derived from a thorough investigation. In order to get to the facts and conduct a thorough investigation, a supervisor should do the following;

1. **Initiate the Investigation as Soon as Possible** - An investigation should be initiated as soon as the allegations of misconduct are brought to the supervisor's attention. It is best to get the facts soon after the misconduct in question in order to obtain the most accurate account of what actually occurred.
2. **Carefully Plan the Investigation** - Before initiating the investigation, take some time to consider who will need to give a statement, what kind of documentation you will need to review and who, if anyone will be able to assist you in conducting the investigation. Keep in mind that the objective of the investigation is to determine who was involved in the misconduct, which rule or policy was violated as part of the misconduct, when misconduct occurred, and where misconduct occurred.
3. **Document Your Actions Throughout the Investigation** - It is important to maintain notes of everything that was done as part of the investigation. For example, notes of conversations between participants in the investigation, dates and times when attempts were made to contact witnesses, who was consulted to review the investigation and finally, when the investigation was completed.
4. **Obtain Written Statements From Witnesses** - Instruct witnesses to provide a written statement about what they saw or heard, any other witnesses who may be able to contribute to the investigation, and any other relevant observations which will help recreate what occurred. If the witnesses claim that they did not see or hear anything, make sure the witnesses include this as part of their statements. Make sure the witnesses sign and date their statements. Before the investigation is completed, the witness statements should be reviewed to determine if additional witnesses have been identified and if a statement should be obtained from the additional witnesses.

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5. **Obtain a Written Statement From the Employee Accused of Misconduct** - An investigation is not complete unless you have the accused's side of the story. As with the other witnesses, have the accused provide a written statement explaining his/her involvement in the alleged misconduct. If the action under investigation could be grounds for a criminal investigation, have the employee sign a "Garrity Warning" form and explain its meaning. If the employee refuses to give a statement, remind the employee that he/she is required to answer any questions related to an official investigation. Failure to do so could result in indefinite suspension for insubordination. If the employee still refuses, direct the employee to put his/her refusal in writing as his/her statement. Also, an employee being questioned during an administrative investigation does not have a right to representation from anyone during the questioning.

Taped interviews, especially on serious incidents, may be obtained from employees, the complainant, and witnesses. The decision to obtain formal taped interviews versus memoranda and other reports is to be based on a reasonable and practical assessment of the seriousness, nature and complexity of the allegation.

Where permitted by law, the Fire Chief may order an employee to submit to a polygraph examination concerning the case or to submit to chemical or other tests or photographs that may assist in an administrative investigation.

6. **Identify the Facts** - Once the supervisor has gathered all the information he or she can collect about the alleged misconduct, identify the facts. A supervisor should never base the decision to discipline an employee on opinions, conjecture, or speculation. The decision should be based only on objective facts which should be readily available through a properly conducted investigation. Based on all the information that is collected through the investigation, a supervisor should be able to determine whether or not the alleged misconduct occurred and whether the accused employee was responsible for the misconduct.
7. **Maintain a Complete Investigative File** - Regardless of the conclusions, supervisors should make sure to keep all witness statements and evidence considered as part of the investigation in an investigative file. Make sure all notations are neat and legible. It can take many months before a case is actually presented to a hearing officer and years before it is tried before a jury. If the investigation that led to the appeal or the lawsuit is incomplete or incomprehensible, it is useless in the defense of the case.

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In conducting an investigation into alleged misconduct, supervisors should be mindful that in the event of future litigation over the disciplinary action, the investigation, and the decision to discipline will be closely scrutinized by a plaintiff's attorney, hearing officer, civil service commission or maybe even a jury. An employer's best defense is proof that the allegations of misconduct were methodically and thoroughly investigated, the accused employee was given a fair opportunity to participate in the investigation, and the decision to proceed with a disciplinary action was based on undisputed facts.

Further, a thorough investigation into the alleged misconduct will create a blueprint for the disciplinary appeal and will allow for viewing the case as it will be presented at the appeal hearing. If, at this level of review there are not sufficient facts to substantiate the proposed disciplinary action, chances are, the disciplinary action will not survive the appeal. It is wise in these situations to either do additional investigating to obtain the facts necessary to support the allegations of misconduct or carefully consider whether to proceed with disciplinary action at all.

8. **Decision of Investigation** - Upon completion of the investigation, all reports and documentation will be forwarded to the affected employee's chain of command. Upon review of the investigation report, each chain-of command supervisor will submit a recommendation on whether to sustain, not sustain, or unfound the allegations. If the recommendation is to sustain the allegation(s), a recommendation on disciplinary action shall also be included. Sufficient information will be provided within the report to reach a reasonable conclusion as to the actions of any involved employee of the Department and to allow an appropriate review by the employee's chain-of-command.

On administering disciplinary action up to and including written reprimand, this requirement can normally be satisfied by completing the Informal Counseling, Formal Counseling, or Written Reprimand form. While a specific allegation may be listed in the complaint, supervisors may recommend action to correct any substantiated violation of law, policy, or procedure.

9. **Determine the Appropriate Level of Discipline** – If the charges of misconduct are substantiated, the investigating supervisor should carefully review the employee's personnel file before proceeding with a disciplinary action. Close attention should be paid to the employee's disciplinary history and performance evaluations. Ensure the employee's personnel file is complete and contains the most current information on the employee.

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- 10. Ensure the Level of Discipline Imposed is Appropriate** - A supervisor will inevitably face a situation where the violation of a rule or policy is so severe, the progressive disciplinary scheme will not be appropriate for the offense. For example, an employee who reports to work under the influence of drugs becomes violent at the work place, or commits a crime at the work place. In these types of situations, indefinite suspension will almost always be appropriate even if the employee has not been disciplined prior to the incident in question. This type of situation is rare and for average infractions, progressive discipline will be appropriate. Do not deviate from the progressive disciplinary scheme, unless you can prove beyond a doubt there is a good reason to do so.

Disciplinary Action

Disciplinary action, if imposed, as a result of the findings of any investigation described herein, shall be in accordance with the requirements of Chapter 143, Texas Local Government Code and rules adopted by the City of Bryan Fire Fighter's and Police Officer's Civil Service Commission for Civil Service Employees, and City of Bryan procedures for civilian employees. The imposition of discipline by the Department, in whatever form, shall in no way preclude a further sanction imposed against an employee in subsequent criminal or civil proceedings. Any sanctions imposed in criminal or civil proceedings against an employee of this Department shall not preclude the imposition of administrative sanctions.

Confidentiality of Investigations and Files

Access to complaint or investigative records shall be limited to those persons authorized by the Fire Chief. The Department will comply with valid requests through the Open Records Act and with orders from a Court of competent jurisdiction. Complaints placed in a member's official Civil Service file will be handled in accordance with Chapter 143.089 of the Texas Local Government Code.

All matters related to administrative investigations shall be kept in the strictest confidence. To this end, all employees of the Department shall take those measures necessary to ensure the integrity and confidentiality of all documents and other records in any way associated with the reporting, investigation, or resolution of complaints. All employees having any responsibility for the investigation or records functions shall ensure the integrity of files or other records, when such records are within their custody.

APPENDIX F

BRYAN FIRE DEPARTMENT**INFORMAL COUNSELING**

(FOR SWORN PERSONNEL ONLY)

NAME: _____

COMPANY ASSIGNMENT: _____

REASON FOR ACTION:

RECOMMENDATIONS FOR IMPROVEMENT:

Supervisor's Signature_____
Date

I acknowledge that my supervisor has discussed this action with me, including my corrective action plan. I understand this action will be placed in my Departmental File for at least 12 months and that I may attach a written reply to this document. If no other similar behavior is noted for 12 months, this will be removed from my file.

Employee's Signature_____
Date_____
Chief Officer's Signature_____
Date_____
Assistant Chief's Signature_____
Date_____
Fire Chief's Signature_____
Date

CERTIFICATION STATEMENT

I hereby certify that this paper constitutes my own product, that where the language of others is set forth, quotation marks so indicate, and that the appropriate credit is given where I have used the language, ideas, expressions, or writings of others.

Signed: _____