



The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

May 4, 2023

Chief William Scott
Chief of Police

Dear Chief Scott:

At the meeting of the Police Commission on Wednesday, May 3, 2023, the following resolution was adopted:

RESOLUTION 23-40

ADOPTION OF REVISED DEPARTMENT GENERAL ORDER 2.08, "PEACE OFFICER RIGHTS IN DISCIPLINARY INVESTIGATIONS"

RESOLVED, that the Police Commission hereby adopts revised Department General Order 2.08, "Peace Officer Rights in Disciplinary Investigations".

AYES: Commissioners Walker, Benedicto, Byrne, Yee, Vice President Carter-Oberstone, President Elias
ABSENT: Commissioner Yanez

Very truly yours,

Sergeant Stacy Youngblood
Secretary
San Francisco Police Commission

CINDY ELIAS
President

MAX CARTER-OBERSTONE
Vice President

LARRY YEE
Commissioner

JAMES BYRNE
Commissioner

JESUS YANEZ
Commissioner

KEVIN BENEDICTO
Commissioner

DEBRA WALKER
Commissioner

Sergeant Stacy Youngblood
Secretary

1211/ks

cc: Captain D. Toomer/PSPP
Lieutenant E. Altorfer/PSPP
Gloria Rosalejos/Written Directives

Peace Officer Rights in Disciplinary Investigations

2.08.01 PURPOSE

The Public Safety Officers Procedural Bill of Rights Act (“the Act”), Government Code sections 3300-3313, establishes various employment rights for sworn members. Among other things, the Act establishes various peace officer rights regarding interviews during administrative (i.e. disciplinary) investigations. This General Order re-affirms pertinent rights applicable to such investigations and administrative interviews. This General Order neither expands nor contracts the rights identified in the Act.

2.08.02 POLICY

- A.** When Rights Apply - The interview¹ rights of the Act apply when a sworn member is under investigation and subject to an interview that could lead to punitive action.
 - 1. Witness officers are not entitled to the rights of the Act because they are not subject to an interview that could lead to punitive action.
 - 2. The interview rights of the Act do not apply in the normal course of duty, formal or informal counseling, instruction, or other routine or unplanned contact with a supervisor or any other member of the Department.
 - 3. The interview rights of the Act do not apply to an investigation concerned solely and directly with alleged criminal activities.

- B.** Pre-Interview Rights - The following rights apply prior to an officer being subject to an administrative interview.
 - 1. The member shall be informed about the nature of the investigation prior to an interview.
 - 2. The member shall be entitled to the representative of their choice, if desired, and a reasonable opportunity to prepare for the interview with that representative.
 - a. The member must choose a representative who is reasonably able to attend the interview.
 - b. The representative may not be a person subject to the same investigation.
 - 3. Members are not entitled to pre-interview discovery.
 - 4. Prior to the submission of a memorandum regarding a matter that could lead to disciplinary action against the member, a member has the right to have a representative review the member’s memorandum. Supervisors must advise members of the right to a representative when ordering a member to draft such a memorandum.

¹ For purposes of this General Order, “interview” is used in the same manner as “interrogation” in the Act.

C. Interview Rights - The following rights apply during an administrative interview.

1. The interview shall be conducted at a reasonable hour, preferably at a time when the member is on duty or during normal waking hours, unless the seriousness of the investigation requires otherwise.
2. The interview shall last for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The member shall be allowed to attend to their own physical necessities.
3. The member shall not be subjected to offensive language or threats of punitive action, except that a member refusing to respond to questions or submit to interview shall be informed that failure to answer questions may result in punitive action.
4. The member shall only be asked questions by no more than two investigators at any given time.
5. The interview may be recorded. Members may not use Department property, including body-worn cameras, to record administrative interviews.
6. Members retain their Constitutional right to remain silent. Members who invoke their right to remain silent will be provided with a “Lybarger” admonishment. However, as a condition of employment, the member must answer all questions posed during the interview. Any subsequent statement may be used for administrative purposes but may not be used in any subsequent criminal action against the member. All statements, declarations, or answers to questions regarding the investigation shall be truthful and non-evasive.

References

DGO 1.06, Duties of Superior Officers
DGO 2.01, General Rules of Conduct
DGO 2.04, Complaints Against Officers
DGO 2.07, Discipline Process for Sworn Officers
Government Code §§ 3300-3313

~~PEACE OFFICERS' RIGHTS~~

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~~Peace Officer Rights in Disciplinary Investigations~~

~~2.08.01 PURPOSE~~

~~The Public Safety Officers Procedural Bill of Rights Act (“the ~~policy of Act~~”), Government Code sections 3300-3313, establishes various employment rights for sworn members. Among other things, the San Francisco Police Department that in all cases where a ~~Act~~ establishes various peace officer rights regarding interviews during administrative (i.e. disciplinary) investigations. This General Order re-affirms pertinent rights applicable to such investigations and administrative interviews. This General Order neither expands nor contracts the rights identified in the Act.~~

~~2.08.02 POLICY~~

~~A. When Rights Apply - The interview¹ rights of the Act apply when a sworn member is under investigation and subjected to interrogation by a superior officer, a member of the Office of Citizen Complaints, Management Control Division, or Equal Employment Opportunity Unit, in the course of a lawful investigation, which subject to an interview that could lead to punitive action, he/she shall be provided rights as specified in the Public Safety Officers’ Procedural Bill of Rights (Government Code Section 3300, et seq.). Those rights include, but are not limited to the:~~

- ~~1. Witness officers are not entitled to the rights of the Act because they are not subject to an interview that could lead to punitive action.~~
- ~~2. The interview rights of the Act do not apply in the normal course of duty, formal or informal counseling, instruction, or other routine or unplanned contact with a supervisor or any other member of the Department.~~
- ~~3. The interview rights of the Act do not apply to an investigation concerned solely and directly with alleged criminal activities.~~

~~A.B. Pre-Interview Rights - The following rights apply prior to an officer being subject to an administrative interview.~~

~~¹ For purposes of this General Order, “interview” is used in the same manner as “interrogation” in the Act.~~

1. The ~~officer~~member shall be informed about the nature of the investigation prior to an ~~interrogation~~interview.
2. The ~~officer~~member shall be entitled to the representative of their choice, if desired, and a reasonable opportunity to prepare for the interview with that representative.
 - a. The member must choose a representative who is reasonably able to attend the interview.
 - b. The representative may not be a person subject to the same investigation.
3. Members are not entitled to pre-interview discovery.
- 2-4. Prior to the submission of a memorandum regarding a matter that could lead to disciplinary action against the member, a member has the right to have a representative ~~present, if desired,~~review the member's memorandum. Supervisors must advise members of the right to a representative when ordering a member to draft such a memorandum.

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C. Interview Rights - The following rights apply during an administrative interview.

1. The interview shall be conducted at a reasonable hour, preferably at a time when the member is on duty or during normal waking hours, unless the seriousness of the investigation is ~~criminal in scope, or could~~requires otherwise.
2. The interview shall last for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The member shall be allowed to attend to their own physical necessities.
3. The member shall not be subjected to offensive language or threats of punitive action, except that a member refusing to respond to questions or submit to interview shall be informed that failure to answer questions may result in ~~criminal charges being filed, the officer has a constitutional~~punitive action.
4. The member shall only be asked questions by no more than two investigators at any given time.
5. The interview may be recorded. Members may not use Department property, including body-worn cameras, to record administrative interviews.
3. ~~Members retain their Constitutional right to remain silent and/or have an attorney present during investigation.~~
- 4.6. If the investigation is administrative, the ~~officer~~. Members who invoke their right to remain silent will be provided with a "Lybarger" admonishment. However, as a condition of employment, the member must answer all questions posed during the administrative ~~investigative investigation. Statements made during an administrative investigation cannot~~interview. Any subsequent statement may be used ~~against an officer to prove a criminal violation in a~~for administrative purposes but may not be used in any subsequent criminal action against the ~~officer (Lybarger v. City of Los Angeles, 40 Cal.3d 822 (1985)).~~member. All statements, declarations, or answers to

questions regarding the investigation, ~~however,~~ shall be truthful and non-evasive.
~~Members failing to do so shall be subject to disciplinary action.~~

5. ~~Members under interrogation shall not be subjected to offensive language or threatened with punitive action.~~

References

DGO 1.06, Duties of Superior Officers
DGO -2.01, General Rules of Conduct
DGO 2.04, Citizen Complaints Against Officers
~~Government Code Section 3300, et seq.~~
DGO 2.07, Discipline Process ~~For~~ Sworn Officers
~~DM12 Disciplinary Penalty and Referral Guidelines~~
Government Code §§ 3300-3313