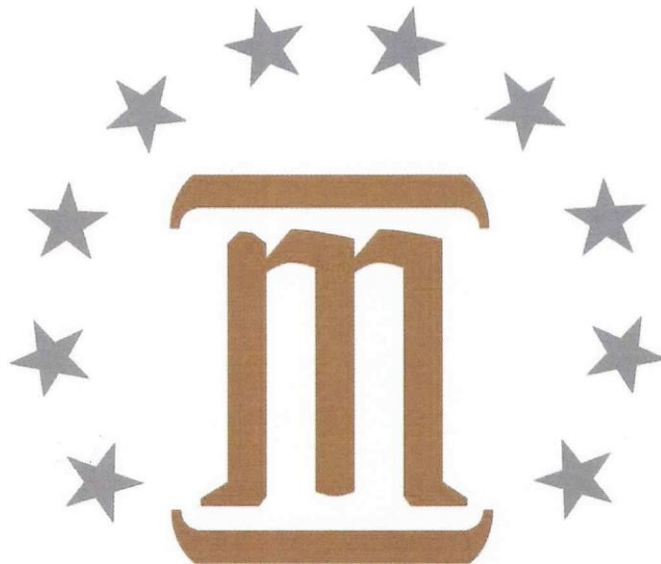


**OFFICE OF THE MAYOR  
OFFICE OF CITY INVESTIGATIONS  
MONTGOMERY, ALABAMA**



**CITY INVESTIGATIONS  
2021 HANDBOOK**

City of Montgomery

# City Investigations Handbook

Revised 10/1/2021

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# OFFICE OF CITY INVESTIGATIONS CITY OF MONTGOMERY, ALABAMA

## Chapter 1

### Policy, Authorities, and Responsibilities

#### 1.1 INTRODUCTION

This directive implements policy and standard operating procedures for the City of Montgomery's Office of City Investigations (CI). It is applicable to all City of Montgomery employees. There are no releasability restrictions on this directive.

**Compliance with this directive by all City of Montgomery employees is mandatory.**

The Office of City Investigations is the *Mayor's* direct independent investigative arm and is the central focal point for complaints and investigations of wrong-doing, as well as citizen complaints and claims against the City.

**Refer to Chapter 2 of this directive for procedures to file a complaint or report wrongdoing.**

CI is a separate *department* directly reporting to the Mayor as his investigative office for all municipal affairs. The CI staff works directly on behalf of the Mayor with his delegated legal authority. With the approval of the Mayor, it also provides the functional and legal methodology that would compel all offices (and City employees) to fully cooperate with CI, *via subpoena*, if necessary. Failure to comply will result in disciplinary action up to and including termination.

The CI Director also acts to facilitate counsel and liaison with the City Attorney's Office and administrative offices of the City.

All Cabinet members, department heads, supervisors, and employees shall comply with any request from CI in the investigation of each case.

## **1.2 ABOUT THIS HANDBOOK**

This directive/policy handbook instruction explains: (1) CI's legal authorities, (2) CI's mission, (3) how to file a complaint, (4) procedures to follow when a complaint is filed, (5) how an investigation will proceed, (6) how a report of investigation will be written, and (7) responsibilities of supervisors. This handbook is the standard reference source when a complaint or allegation of wrongdoing is made. Copies will be provided to all City departments.

## **1.3 LEGAL AUTHORITY**

CI's legal authority is delegated on behalf of the Mayor, City of Montgomery, based on the Mayor's responsibilities dictated in Act 618.

Sec 9.03 of Act 618 which is the legal authority for the City states:  
"Investigations by council or mayor":

*"The council, the mayor or any person or committee authorized by either of them shall have power to inquire into the conduct of any office, department, agency or officer of the city and to **make investigations** as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by fine not to exceed \$100 or by imprisonment not to exceed six months, or both."*

## **1.4 MISSION STATEMENT**

**On behalf of the Mayor, City of Montgomery, the mission of CI is to investigate complaints and allegations of misconduct and fairly and objectively present findings of fact for supervisory action or City resolution.**

CI's intensive investigations serve to help maintain the credibility, respect, integrity, and reputation of City agencies and departments within the City government and from the public they serve. CI will also act as a resource and/or consultant for other agencies including City Legal who have received complaints from a staff member, the public, or any other entity.



The results (findings of fact) of a CI Report of Investigation will be supplied to the department head, supervisor, and/or the City Legal Department for further use in any disciplinary or legal action.

CI may be tasked to investigate a broad range of issues related to misconduct or wrongdoing. These include (but are not limited to): violations of rules and regulations, allegations of harassment in any form, fraud, waste and abuse of City resources, abuse of authority, restriction, ethnic slurs, civil rights violations, supervisor retaliation (reprisal), misuse of City resources, discharge of weapons, death while in protective custody, complaints made by the public or department member against the City or any City employee.

The Office of City Investigations answers directly to the Mayor, City of Montgomery. The department will include a staff of investigators with extensive operational experience in various City departments or investigative experience in investigative disciplines.

### **1.5 OUTREACH AND EDUCATION**

The Office of City Investigations shall maintain a proactive outreach program. It is City policy that employees have the right to contact CI at any time. However, employees must also know that they are encouraged to handle complaints and disputes at the lowest supervisory level possible before engaging CI. Supervisors and managers should be given the first opportunity to resolve issues.

CI will maintain an active outreach program that describes all CI activities and teaches employees how to effectively use the complaint system. Programs, briefings, and/or information should be presented to new hires at a new-comers orientation programs, and when possible, at the City's leadership and supervisory training programs. Supervisors, managers, and all employees should be familiar with CI operations.

### **1.6 SUPERVISOR RESPONSIBILITIES**

City Departments will not ignore allegations of wrongdoing or misconduct. If wrongdoing or misconduct is minor in nature and can be handled within the supervisor's departmental chain-of-command, it does not need to be reported to CI. However, if the allegation(s) of wrongdoing cannot be handled within the supervisor's department, or there is any question regarding who should investigate

the allegation(s), it should be immediately reported to CI (verbally or in writing). All allegations will be filed in accordance with Chapter 2 of this handbook.

Supervisors will fully cooperate with City Investigations to ensure that employees scheduled for interviews attend as scheduled.

## **SECTION 1A – THE CITY OF MONTGOMERY, OFFICE OF CITY INVESTIGATIONS**

### **1.A1 OVERVIEW**

This section defines the roles and responsibilities of the CI staff and other offices and agencies involved in the CI process.

## **SECTION 1B – AUTHORITY OF THE CITY OF MONTGOMERY, OFFICE OF CITY INVESTIGATIONS**

### **1.B1 KEY TERMS**

This section uses the following key terms: *Office of City Investigations (CI)*, *Investigating Officer (IO)*, and *Report of Investigation (ROI)*.

### **1.B2 STATUTORY AUTHORITY**

The Office of City Investigations derives statutory authority delegated from the Mayor, as described in Act 618, City of Montgomery.

### **1.B3 INVESTIGATIONS NOT COVERED BY THE AUTHORITY DELEGATED TO CI**

Personnel who conduct administrative inquiries or investigations governed by other City of Montgomery policy directives and instructions will not cite this instruction as the authority.

Criminal investigations will be completed by law enforcement personnel in accordance with their delegated authority.

### **1.B4 AUTHORITY TO DIRECT INVESTIGATIONS**

The Mayor, City of Montgomery, may direct the Office of City Investigations to conduct an investigation at any time. On behalf of the Mayor, the Director of CI,

shall have the singular authority to direct investigations, appoint investigating officers (IOs), and approve Reports of Investigation (ROI).

When the Office of City Investigations conducts an investigation into potential policy violations by employees, the investigators interview all relevant parties, gather documents, and consult with relevant departments, including the Legal Department. When they reach their findings, they take into consideration all of the information they have obtained, as well as information not easily conveyed in a written report. This includes attitude and demeanor of witnesses during interviews.

In the event a Cabinet member or department head wishes to challenge the findings of the Office of City Investigations, they should first contact the Director of the Office of City Investigations to discuss their reasoning and to request the findings be amended. This request, along with any supporting information or justification, should be submitted in writing. The Director of the Office of City Investigations will review the request and either reopen the investigation to amend the findings, or if he believes the evidence supports the findings, he will forward the department's request for review to the Mayor's Office for consideration, and the Mayor or his designee will respond within ten calendar days authorizing any amendment to the findings. If the Mayor or his designee does not respond within that time, the findings shall remain as determined by the Office of City Investigations, and the department shall immediately move forward with the next steps in the process. **A finding by the Office of City Investigations may only be altered by the Office of City Investigations or on the authority of the Mayor.**

In addition, when special expertise is needed, the Mayor, or CI Director on behalf of the Mayor, may temporarily appoint an employee from *any* City department (i.e., accounting, engineering, law, etc.) to assist CI in an investigation. This will be done via a CI appointment letter signed by the CI Director.

### **1.B5 AUTHORITY TO CONDUCT INVESTIGATIONS**

Appointed IOs are authorized to conduct CI investigations within the scope of their appointment and under the authority and guidance of this instruction. For each investigation, the CI Director will sign a appointing the IO to investigate the case. The IO's responsibilities for investigating and reporting expire when the final Report of Investigation is approved by the CI Director for distribution to designated persons/departments.

## **1.B6 AUTHORITY FOR CI ACCESS TO MUNICIPAL DEPARTMENTAL RECORDS**

To carry out their responsibilities, CI staff members and IOs must have expeditious and unrestricted access to, and copies of, all applicable City of Montgomery municipal records, reports, investigations, audits, reviews, documents, papers, recommendations, personnel files, or any other relevant material authorized by law and policy. Investigators are authorized access to all documents and all other evidentiary materials needed to discharge their duties to the extent allowed by law and policy.

NOTE: Access to some records may be limited by the record's owner.

No municipal employee may deny CI or a properly appointed IO such access.

CI shall coordinate with the City Legal Department to ensure records are properly obtained (e.g. medical records, e-mails, phone records, etc.).

NOTE: If a subpoena should be required in order to compel the appearance of witnesses, production of books, papers, and other evidence, the CI Director may consult and coordinate with the City Legal Department before proceeding.

## **SECTION 1C – OFFICE OF CITY INVESTIGATIONS COMPLAINTS RESOLUTION AND INVESTIGATIONS PROGRAM**

### **1.C1 CI PROGRAM POLICY**

The CI Complaints Resolution and Investigations Program is a City of Montgomery leadership and management tool that:

- Indicates when mayoral or departmental involvement is needed to respond to employee misconduct and/or wrongdoing, correct procedural weaknesses, and ensures City resources are used effectively and efficiently
- Provides findings of fact(s) surrounding an issue so that City leadership may resolve problems affecting the City's mission promptly and objectively
- Creates an atmosphere of trust in which issues can be objectively and fully investigated and resolved without the fear of retaliation or reprisal to the complainant

- Assists department heads, supervisors, and citizens by instilling confidence in the City of Montgomery leadership

### **1.C2 HOW CI ASSISTS THE MAYOR AND CABINET**

Personnel complaint resolution and CI reports help the Mayor, Cabinet, and department heads discover and correct problems affecting the productivity and morale of personnel. CI activities can help identify the underlying causes of complaints and may prevent more severe symptoms or costly consequences such as reduced performance, accidents, poor work quality, poor morale, rule violations, policy violations, or loss of resources.

Even though allegations may not be substantiated, the evidence or investigative findings may reveal systemic, morale, or other problems that impede efficiency and effectiveness.

### **1.C3 CI MISSION FOCUS**

The primary charge of CI is to sustain a credible investigative system by ensuring the existence of responsive complaint investigations characterized by objectivity, integrity, and impartiality.

CI ensures the concerns of all complainants and the best interests of the City are addressed through objective fact-finding.

To create an atmosphere that encourages submission of well-founded complaints, CI personnel must:

- Ensure their personal behavior is above reproach
- Enhance openness and approachability by briefing the CI Complaints Resolution and Investigations Program at the departmental level, including departmental meetings and new employee orientation sessions
- Educate employees and City leadership regarding the rights of and protections for those employees contacting CI
- Avoid self-investigation and the perception of conflict of interest

- Be trained to conduct thorough, unbiased investigations based on fair and objective fact-finding, and be thoroughly familiar with this directive

## **SECTION 1D – ROLES AND RESPONSIBILITIES**

### **1.D1 CI DEPARTMENTAL RESPONSIBILITIES**

The Office of City Investigations provides CI policy guidance, develops procedures, and establishes and evaluates the Complaint Resolution and Investigations Program.

On behalf of the Mayor, CI conducts **administrative** investigations of wrongdoing such as rules and policy violations by City personnel and investigates citizen complaints and claims against the City. To accomplish its mission, CI will attempt to follow the normal City supervisory chain-of-command. However, if the situation requires, CI investigators may communicate directly with any department head, supervisor, or City employee as required. All City employees will comply with direct requests from CI investigators and/or the CI Director.

Some cases may involve time-sensitive information and will require immediate access to personnel for interviews or to obtain related information for case documentation. If required, the CI Director, on behalf of the Mayor, may authorize CI investigators to directly schedule any employee and/or request any employee to immediately report to City Investigations for an interview.

**CI does not conduct criminal investigations.** The City of Montgomery Police Department is charged with this responsibility. However, CI will partner with and/or cooperate with City law enforcement and the City Legal Department when CI investigations reveal potential violations of law. There may be times when a CI investigation and City criminal investigation will be conducted “in parallel”. In those cases, close coordination and/or cooperation between City law enforcement, the City Legal Department, and CI will be maintained. Normally, the CI Investigation will be subordinate to the criminal investigation.

CI directs investigations and provides direct oversight for all departmental investigations covered by this directive.

CI-assigned personnel will meet training and ethical/professional standards.

CI will provide reports and analysis to the Mayor as required by this directive and will support other City departments as required.

### **1.D2 CLAIMS PROCESSING**

All claims filed with the City Clerk against the City will normally be forwarded through the Legal Department to CI for investigation and then returned to the Legal Department for processing. (See Chapter 3 for instructions.)

### **1.D3 CI ORGANIZATION**

CI is organized as a department function and will report directly to the Mayor, City of Montgomery.

The Director, Office of City Investigations is a City of Montgomery Cabinet member.

The two-letter functional address code for the office will be “CI”.

### **1.D4 ROLE OF THE CI DIRECTOR**

The Director of the Office of City Investigations is responsible directly to the Mayor, City of Montgomery and acts on behalf of the Mayor during day-to-day CI activities. The CI Director will:

- Be thoroughly familiar with and comply with this instruction
- Be responsible for planning, programming, budgeting for, and managing the CI office
- In cooperation with and approval from the Mayor’s Office, ensure the CI office recruits and maintains qualified personnel in order to accomplish its mission
- On behalf of the Mayor, act as the appointing official for CI investigators and balance the workload among investigators as required
- Act as the approving authority for completed Reports of Investigation

- Act as the official spokesperson for the CI office to coordinate with City departments and/or outside agencies

When an allegation is made and an employee misconduct complaint is properly initiated in accordance with this directive, the CI Director will inform the Cabinet member/department head regarding the nature of the complaint and CI's plan to investigate. This will usually occur before any investigation begins. Normally this will be done via official letter format. Cabinet members must keep this information provided by the CI Director CONFIDENTIAL.

### **1.D5 INVESTIGATOR DUTIES**

Investigators assigned to City Investigations may be either merit employees permanently assigned to the office or may be appointed by the Mayor for a four-year assignment (or more) from the police department.

Police officers appointed to City Investigations will be selectively screened and nominated by their department heads (with concurrence of the CI Director) to the Mayor for approval. The Director may look at specific personnel in the police department for the assignment to City Investigations based upon their training, education, and experience. The Mayor shall provide written approval for each individual assigned to City Investigations.

Police officers appointed to City Investigations will serve in a full-time capacity and report directly to the CI Director. Police officers chosen by the Director for a City Investigations assignment will be experienced officers selected from senior sergeant through captain rank. Except for APOST requirements, MPD will not task CI-assigned police officers to perform police duties while assigned to CI without approval from the CI Director. Off-duty employment within the City of Montgomery related to police or security duty is prohibited.

All individuals appointed to City Investigations will complete the required training as described in Paragraph 1.E1.

Investigator case assignments and duties will be determined by the CI Director. All case investigations will be assigned in accordance with this handbook as described in Chapter 3.

CI investigators should not be constrained by additional duties that detract from their primary investigative responsibilities. Therefore, CI investigators and CI staff



members should not be assigned any duties that subsequently disqualify them from conducting unbiased complaint investigations against personnel or activities of the City.

City Investigations has a uniform dress code for the office. The standard pants wear is the 511 tactical pants either tan or black. A City monogrammed Polo shirt is the standard for shirts. All pants, shirts and shoes are provided to investigators. Police officer's assigned to City Investigations will receive the pants via the police department.

In the event a City Investigator attends court, the investigator may choose to wear a business suit for court decorum.

### **1.D5.1 INVESTIGATOR RESPONSIBILITIES**

All personnel assigned to City Investigations represent the Mayor and City of Montgomery and must therefore demonstrate a continuing ability to effectively interact with individuals from a variety of educational, ethnic, and socio-economic backgrounds.

When investigating any case, CI personnel will always be sensitive to the feelings, needs, and points of view of any citizen in order to resolve complaints, grievances, and gather information. CI personnel will not argue with or verbally attack any citizen with a grievance or complaint. Treating everyone with courtesy, respect, and honesty is in the best interest of both the City and its citizens. In the event interrogation type interview (Accusatory) is used, prior authorization from the CI Director will be obtained.

Unless specifically cleared by the City Legal Department or the CI Director, City Investigations staff will not discuss or reveal case investigation information. Investigation staff will treat all investigative case information as CONFIDENTIAL. In cases involving Attorney-Client Privilege, information will not be released or discussed without authorization from the City Legal Department.

All CI personnel will perform assigned duties and will fully cooperate to complete assignments as directed by the CI Director.

### **1.D5.2 REMOVAL FROM CITY INVESTIGATOR DUTIES**

Any serious violation of City-County Personnel rules, the City of Montgomery Employee Handbook, or the City Investigations Handbook will result in discipline (in accordance with the City Progressive Discipline Policy) up to and including termination for the first offense.

Personal behavior and/or actions that are not in the best interest of the City may result in termination or dismissal from investigator duties for the first offense.

#### **1.D6 ROLES OF THE OFFICE OF CITY INVESTIGATIONS IN RELATION TO THE MAYOR**

The roles of CI are to:

- Be the “eyes and ears” of the Mayor. Investigative fact finding can serve to inform the Mayor of matters indicative of systemic, morale, or other problems that impede City efficiency and effectiveness
- Keep the Mayor informed of potential areas of concern as reflected by trends based on analysis of complaint data
- Function as the ombudsman, fact-finder, and honest broker in the resolution of complaints. Not all complaints result in investigations. Many times, simply taking a complaint and facilitating communication (i.e., making phone calls or asking department experts, etc.) with the right person or department will solve the issue or problem, especially when there is no evidence or assertion of wrongdoing
- Educate and train employees of the City on their rights and responsibilities regarding the CI system
- Assist the Mayor and department heads in preventing, detecting, and correcting fraud, waste, abuse, and mismanagement
- Investigate complaints and claims against the City made by the citizens of Montgomery as assigned by the CI Director on behalf of the Mayor

To fulfill these roles, the CI must be an integral member of the Mayor’s staff and have unimpeded access to the Mayor, Cabinet, department heads, supervisors, and City offices. The Mayor must ensure that CI’s authority, duties, and responsibilities are clearly delineated.

The independence of the CI department must be firmly established and supported to overcome any perceived lack of autonomy that would discourage potential complainants and/or preclude disclosures of wrongdoing from being brought to the attention of CI.

#### **1.D6.1 ON-CALL DUTY**

Investigators assigned to City Investigations are considered “on call” (i.e., subject to being called in) and, therefore, may be required to respond after normal working hours or on weekends. Investigators will use their City-assigned vehicle for on-call duty. A City investigator “called in” during other than normal working hours will be given flex time off. City Investigators may be called out for serious City incidents including officer-involved shootings. The City Investigators will rotate on-call assignment and will be placed on the MDPS On-Call Spreadsheet as required.

Investigators called out will only be in the observant role and gather information related to administrative policy.

#### **1.D7 MAYOR’S SUPPORT OF THE CI DEPARTMENT**

Although the Mayor has the ultimate authority for the direction and conduct of CI investigations, the Mayor delegates to the Director of CI the authority to act on behalf of the Mayor on issues pertaining to the day-to-day activities of the CI Department. To support the Office of City Investigations, the Mayor should:

- Provide City resources to ensure the CI office is fully staffed, equipped, and trained
- Appoint, in writing, those individuals authorized to serve as CI investigators
- Provide complete support to the CI Director as required
- Ensure that CI staff follows the requirements of this instruction and reassign/terminate CI staff members who fail to meet the professional and ethical standards required by this directive
- Educate City personnel about the rights and responsibilities of all personnel regarding the Office of City Investigations at cabinet meetings, staff meetings, and other gatherings as needed

### **1.D8 CI REPORTS TO THE MAYOR AND MAYOR'S CI REVIEW BOARD**

The CI Director will provide a monthly report to the Mayor summarizing CI cases. In addition, the CI Director will meet with the Mayor and City Attorney to discuss this report.

On a periodic basis, the Mayor may convene a Mayor's CI review board (chaired by the CI Director) with the City's designated Cabinet level/senior leadership. This meeting would include a general discussion of CI cases. The discussion need not mention specific individuals by name, but focus on the general facts of a case and the follow-up action. Supervisors would discuss the action taken and why.

### **1.D9 REMOVING COMPLAINTS FROM THE CI SYSTEM**

When complaints and allegations of wrongdoing have been recorded and assigned for investigation, the investigation will be completed.

Once a complaint has been recorded and an investigation has been assigned to an IO, the department head shall have no authority to take that complaint and resolve it through a separate investigation without prior approval of the CI Director, Mayor, and City Attorney.

In some cases, complainants may elect to withdraw a complaint from CI channels and instead submit it through supervisory channels for resolution. This must be done in writing by the complainant. CI reserves the right to proceed with an investigation if the allegations clearly identify a recognizable wrong or violation of law, policy, procedure, or regulation. **EXCEPTION:** Allegations of reprisal/retaliation and abuse of authority **must** be investigated within CI channels when warranted.

**NOTE:** CI may refer a complaint to law enforcement or other administrative agency even though the complainant disagrees with the referral. Such referrals may include, but are not limited to, allegations of criminal activity, notice of danger to people and/or property, personnel matters, and problems with potential to adversely impact the City.

### **1.D10 CASE DATE MANAGEMENT**

All CI actions (complaints, letters, documentation, interviews, photographs/evidence, etc.) shall be maintained by the CI Department and may be subject to Attorney/Client Privilege and/or Attorney Work Product. Upon

completion of the investigation, the Report of Investigation (ROI) shall be sent to the department head for action and distribution as directed in the ROI or by this directive. The case file shall be scanned and retained electronically by CI. Any release of documents shall be for official purposes only. Case file data shall remain on file with the CI administrative office and/or the City Legal Department.

**1.D11 ACCESS TO CASE REPORTS AND SUPPORTING INFORMATION DURING AND AFTER CI INVESTIGATION**

Reports of Investigation must be treated as CONFIDENTIAL and may be subject to Attorney/Client Privilege and/or Attorney Work Product. The investigation process between IOs and anyone interviewed will also be treated as CONFIDENTIAL.

Employees interviewed during an investigation will not divulge any information related to the interview. This is because CI must conduct an impartial and truthful investigation and produce a report that does not have a possible fabrication or alignment of testimony from collaborating witnesses.

During an interview, any information or questions asked must not be shared due to the possible spoliation or tainting of evidence that could jeopardize an investigation. In addition, some cases require follow-up interviews and any outside or unofficial discussion could jeopardize the impartiality of an investigation or Report of Investigation.

Failure of employees to adhere to this requirement will result in disciplinary action to include termination.

Communication between the City Attorney's Office, department heads, and/or direct supervisor(s) regarding interviews and the investigation is confidential and shall not be discussed as it may be subject to attorney/client privilege.

Because a department head and/or supervisor may need to take some disciplinary action against an employee when the ROI is completed, they must remain "neutral" and not interfere or attempt to influence the investigation process.

During an investigation, information may be discovered that will require immediate supervisor attention. In those cases, the CI Director will decide what general information may be released.

Once signed/approved by the CI Director, completed ROIs will be sent to the City Legal Department within one working day for legal review. Once the legal review is complete, the CI Director will deliver the ROI to the appropriate department head/supervisor.

### **1.D12 DISPOSTION OF REPORTS**

When completed Reports of Investigation are provided to department heads or supervisors, they **will not be copied or reproduced in any form and should not be unstapled for any reason.** ROIs will not be placed in an individual's City personnel file. **All ROIs will be returned to City Investigations no later than the date listed on the blue cover sheet.**

ROIs will be treated as confidential and/or Attorney/Client Information and must be safeguarded. Information contained in ROIs will not be divulged to anyone without an official need to know the information. When supervisory action is completed, ROIs will be returned to the Office of City Investigations **by the date listed on the blue cover sheet** for filing and storage. Supervisors will initial next to their names on the signature page (page one of the ROI) prior to returning the ROI to CI.

Original completed ROIs **will not** be released to the subject employee. A Subject's Report of Investigation (Green cover) will be provided to the subject employee if there are substantiated charges. The Subject's Report of Investigation is intended for the subject only, and will not be returned to CI. The City Legal Department may authorize the release of a redacted Subject's Report of Investigation and will determine what information will be released. Any requests for any other information regarding a CI case should be made through the City Clerk's Office.

### **1.D13 CI RECORDS RELEASE, CI FILES & PUBLIC DOCUMENTS**

CI and the City Legal Department will follow policy guidelines for control of the CI records and files explained below. Completed CI investigations, or portions thereof, may be public record in accordance with existing law. Certain portions of the CI files may remain confidential as work product and/or privileged communications between attorney and client.

CI investigations are confidential until: The investigation is completed upon a finding by the City Attorney's Office and reported to the department head or designated staff member, appropriate action is taken, and until the appeal process is

concluded. However, due to their confidential nature, CI records will remain undisclosed, unless release is otherwise authorized by the City Attorney's Office, to preserve any attorney-client privilege or work-product documents. Disclosure of documents or part of the record of the investigation to a third party does not waive any privilege as it relates to other records in the investigative file. Department heads and supervisors in possession of CI reports will treat them as confidential and in accordance with attorney-client privilege or the work product rules.

The retention period for CI investigation cases is five years from case completion or as prescribed by appropriate directives.

Cases that have pending litigation will be forwarded to the City Legal Department and will not be destroyed until litigation has ceased. The City Legal Department will determine disposition of these cases.

Information regarding cases that have been worked "in parallel" with a separate criminal investigation will not be released without approval of the City Legal Department and the CI Director.

#### **1.D14 PUBLIC ACCESS**

The information received by a public officer or public official in confidence, information which contains sensitive personnel and medical records, pending criminal investigations, information received in anticipation of litigation or likely litigation, and records which, if released, would be detrimental to the best interests of the public shall remain confidential and will not be disclosed to the public without a proper court order and an opportunity for the City to object, appeal, and have all appeals concluded.

Access to CI investigative reports are subject to state and federal laws and the applicable rules of evidence and procedure and are never available until after the conclusion of the investigation without a proper court order.

All requests for copies of the ROI must be submitted by a Request for Public Records to the Office of the City Clerk, Records Management Service. The Request for Public Records will be documented in the Clerk's office and then forwarded to the City Legal Department. The City Legal Department will be responsible for obtaining the records for review and release subject to state and federal laws and/or attorney-client work rules.

All requests for statistical records from the Office of City Investigations are judged on the scientific merit, methodology, data security procedures, benefit to the City of Montgomery, Alabama and the public. Statistical record review will be completed within 30 days, and the applicant will be notified in writing of the decision regarding the release of data.

Records duplication of CI case documents are subject to the same fees as set forth by the Records Management Service, Office of the City Clerk for the City of Montgomery.

### **1.D15 DOCUMENT RELEASE PROCEDURES**

Every document that is to be released will be reviewed by the Legal Department and may be excised/redacted prior to being released. The information that should be redacted includes, but is not limited to, the following:

1. Undercover officers' names
2. Home addresses of officers and their families
3. Spouse's place of employment
4. Children's schools
5. Investigative techniques
6. Witness or informants' names
7. Active criminal information
8. Criminal intelligence or investigative information
9. Information received by a City, County, or State criminal justice agency from an outside state or federal agency on a confidential basis



10. Attorney work product or any material or notes which are confidential under the attorney/client privilege or any other applicable rule, regulation, or law.

The City Legal Department will be responsible for making a copy of the document, striking (redacting) the confidential material from the document, recopying the excised copy, and again striking the material that is restricted.

## **SECTION 1E – TRAINING REQUIREMENTS**

### **1.E1 CI TRAINING**

The Office of City Investigations will be responsible to train acting, subordinate, or CI administrative support personnel and investigation officers (IOs) to conduct investigations, provide assistance, process complaints, and resolve disputes as appropriate for the City of Montgomery.

Newly-hired investigators and CI staff members must successfully complete a CI Orientation/Training Course after initial employment. This will include on-the-job instruction and supervision. Training will be coordinated through the Director of CI or his/her designee(s). In addition, CI investigating officers will be scheduled for and attend investigative training programs available commercially or through college/university courses.

All CI staff members designated to receive complaints or conduct investigations will be thoroughly familiar with this handbook.

## **SECTION 1F – EDUCATION OF CITY PERSONNEL**

### **1.F1 EDUCATING PERSONNEL ON THE CITY INVESTIGATIONS PROCESS**

Supervisory personnel at every level are responsible for ensuring employees are aware of and understand their rights and responsibilities regarding the CI Complaints Resolution and Investigation Process contained in this directive.

CI should actively publicize the CI Complaints Resolution and Investigation Program and train personnel by taking the following actions:

- Publicize the CI Program through the City website, bulletins, newspapers, orientations, leadership schools, staff meetings, and by visiting work areas
- Distribute CI Complaints Resolution information (posters, flyers, etc.) in work areas (for maximum exposure), reflecting the CI's name, location, and phone number. The purpose of these posters is to assist personnel in contacting CI
- Ensure all personnel are aware of how to use the CI system and are aware of the City's policies on wrongdoing, reprisal, retaliation, and discrimination
- Locally disseminate CI-related news, innovative ideas, and lessons learned
- Educate staff as requested or as needed on their reporting responsibilities regarding allegations against any City employee. They should also be educated on their responsibility to provide documentation and evidence, in addition to interviews, as requested.
- Educate department heads, staff, and supervisors concerning the rights of employees to make protected communications to CI without reprisal, retaliation, or the need to follow the supervisory chain-of-command in order to report a complaint.
- Provide City public information officials with updates or any changes to CI policy/procedure in an effort to prevent misunderstanding and complaints.

## **SECTION 1G – ADMINISTRATIVE MAINTENANCE OF CI RECORDS**

### **1.G1 MARKING CI RECORDS**

All reports and documentation shall be appropriately marked with markings such as private, attorney-client privileged and/or attorney work product, confidential, FOUO, etc.

CI reports and records will be marked for official use only (FOUO).

Mark or stamp reports on the outside of the front cover (if any) or at the bottom of the first page above the "FOUO" marking with all or part of the following disclaimer, as appropriate:

**This is a protected document. Unless otherwise indicated, the information contained in this report is confidential. It will not be released, reproduced, or given additional dissemination, in whole or in part, without permission from the Director, Office of City Investigations and/or the City Legal Department.**

**If the reader of this report is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that dissemination, distribution, or copying of this report is strictly prohibited and may result in severe penalties up to and including termination.**

**If you have received this report in error, please immediately return it to the Office of City Investigations.**

Mark all copies of the ROI and other responses “FOUO”.

Mark all documents provided by the complainant as “COMPLAINANT PROVIDED” in the lower right-hand corner of each page.

## **1.G2 PROTECTION OF CI RECORDS**

CI Reports of Investigation are protected documents. Only the CI Director and/or the Legal Department representatives can approve release of CI documents outside of CI channels.

CI ROIs should not normally be disclosed to individuals outside of the supervisory chain-of-command. Normally, they should only be disclosed inside of the chain-of-command to those requiring access to the records in the performance of their official duties.

Letters that transmit (or cover) CI reports and records (FOUO material) must call attention to the FOUO attachments. In these cases, use the following statement as a separate paragraph: “This letter does not contain ‘FOR OFFICIAL USE ONLY’ information; however, the attached documents are marked ‘FOR OFFICIAL USE ONLY’ and contain protected information.”

Onsite records are stored both digitally and hard copy. Hard copy records will be maintained for one (1) year onsite before transfer to the records warehouse. The release of any data record will only be to the Director of City Investigations and at

the direction of the Director and the records management clerk assigned as the Administrative Assistant of the Office of City Investigations.

Digital records will be maintained on the City assigned "S" drive system. Each year, the Director of City Investigations will assess the storage capacity of the share drive system and/or request additional space for historical data and data retrieval.

### **1.G3 PROTECTING PRIVACY INTERESTS**

Prior to case closure, investigating officers conducting CI investigations **will not** provide witnesses, subjects, or other third parties with copies of complaints, investigative reports, or documents; nor will they allow those parties to read any complaint filed through CI channels.

A complaint to CI, or a complaint being worked in CI channels, is protected information.

Prior to being interviewed, subjects must be advised of the specific nature of the allegations against them to permit them to properly respond to or defend against such allegations. A standard read-in form will be read to each subject or witness.

Witnesses need only be sufficiently advised of the matters under investigation to permit them to respond to the questions asked and to provide other relevant information.

When necessary and appropriate, the complainant should be told that the IO must be able to discuss the case with appropriate officials and witnesses to resolve the complaint.

Generally, do not release the complaint, materials, or information provided by the complainant, or the response to the complainant to a third party requester or the subject, without the complainant's written consent.

Protect the privacy interests of others involved by complying with the established guidelines.

When a CI investigation is halted because it is determined another investigation is warranted, guard the protected nature of the CI records involved.

*Note: When the investigation uncovers certain criminal allegations of wrongdoing (Ethics), the investigator will notify the Director for direction of the investigation. The Director may have the investigator build a Prima Facie case based upon evidence without interviews to turn over to different state agencies. This includes any records or evidence.*

Prepare a summary of the case, which may include a list of witnesses and documents from other systems of records or other relevant information. This is to guard CI records from inadvertent disclosure and waiver of their protected nature.

#### **SECTION 1H – RESPONSIBILITIES OF THE CITY LEGAL DEPARTMENT**

When necessary, the City Legal Department will:

- Assist CI in analyzing complaints and claims to identify allegations of wrongdoing
- Provide advice on framing or re-framing allegations prior to investigation
- Provide advice and assistance to the CI Director and/or IOs during an investigation
- Provide a legal review of the ROI in accordance with this instruction
- Provide comments or present recommendations to improve the ROI
- Advise CI on the disposition of materials gathered during the investigation, such as recording tapes, CDs, written memos, etc.
- Advise CI on the release requirements of completed Reports of Investigation

#### **SECTION 1I – POLICY ON POLICE AND FIRE DEPARTMENT UNIQUE INVESTIGATIONS**

Daily Police and Fire Department activities may result in allegations of wrongdoing or rule breaking not normally occurring in other City of Montgomery departments. The following investigations require unique procedures and coordination.

##### **1.11 POLICE DISCHARGE OF A FIREARM OR SHOOTING, DEATH IN CUSTODY, K-9 BITE RESULTING IN NEAR DEATH, OR ANY SERIOUS CRITICAL INCIDENT**

Anytime a firearm is discharged by a police officer in the line of duty that causes physical injury or death to another person or to the police officer, or whenever a death occurs while a person is “in custody”, an investigation shall be completed by the Alabama State Bureau of Investigation (SBI) or other appropriate law

enforcement agency. Any time the Alabama State Bureau of Investigation (ALEA) is called for an investigation, City Investigations will be called to respond to the scene.

CI will also investigate the incident to determine what, if any, administrative rules, policies, or procedures may have been violated.

Normally, when a criminal investigation is required, SBI or other appropriate law enforcement agencies will complete their investigation before CI begins its investigation.

Investigations by SBI and CI may also be conducted in parallel. However, CI will immediately suspend its parallel investigation when requested to do so by investigating law enforcement agencies. In those cases CI will resume investigation when cleared to do so by law enforcement.

CI will not make public/media statements regarding any investigation, especially investigations conducted in parallel with law enforcement, unless specifically cleared by the City Legal Department and the CI Director. Public/media comments regarding any on-going parallel investigation may jeopardize the criminal investigation being conducted by law enforcement and/or adversely affect legal processes related to the case.

In order to prevent interference with SBI or the police crime scene investigation, the following policy applies to CI if CI goes to the scene: After notice of the incident has been received, the CI Director will be informed whenever there is a Montgomery Police Department shooting, discharge of a weapon, or death while in custody.

*SBI normally assumes control of all crime scenes involving police shootings. The purpose is to provide on-scene observation of the situation on behalf of the Mayor. CI does not represent the City Legal Department and will not provide on-scene legal advice.*

While on the scene, CI will not: (1) interview the police officer(s) involved, (2) interview witnesses, (3) enter the specific crime scene, interfere with or contaminate the crime scene in any way, (4) touch, handle, or manipulate any potential evidence to be gathered, or (5) make any public statements regarding the crime scene or the investigation.

When tasked to visit a crime scene, CI may (on a non-interference basis) converse and/or coordinate with SBI and Montgomery Police Department representatives.

CI will coordinate and advise the City Attorney regarding any immediate or potential follow-up legal activities required by the City.

Once SBI has finished with its crime scene activities, CI may be escorted to the crime scene by an MPD representative to gather information needed to begin their investigation, but will not interfere in any way with the SBI or Montgomery Police Department's investigations.

In no case will the subject(s) of an investigation be interviewed sooner than 48 hours after the alleged event. In addition, when investigations are being conducted in parallel with law enforcement, the subject(s) will only be interviewed after SBI or appropriate law enforcement has completed their investigation requirements. When necessary, City Investigations will coordinate with the City Legal Department and/or the appropriate law enforcement agency prior to conducting interviews.

In order to determine if policy or procedures have been violated, police officers who have discharged weapons must comply with applicable MPD directives and should not be released to return to regularly assigned duty until CI has completed its interviews. The Chief of Police will determine when an officer will return to regularly assigned duties. If circumstances require an extensive delay (for this instruction this means greater than 14 working days) before a CI interview can be completed, the CI Director will coordinate with the Chief of Police and/or City Legal Department.

### **1.12 FIRE DEPARTMENT DISCHARGE OF A FIRE ARM OR SHOOTING**

Certain members of the Montgomery Fire Department are authorized to carry weapons in the line of duty. Anytime a weapon is discharged or a shooting occurs, the investigations will be the same as the Police Department, as described in Paragraph 1.11 above.

### **1.13 ACCIDENTAL DEATH OCCURRING DURING FIRE OR RESCUE OPERATIONS**

CI will not normally be dispatched to observe Montgomery Fire Department fire scenes or medical calls. The CI Director will be informed anytime the Fire Department is accused of wrongdoing resulting in accidental death that occurred during fire suppression or during medical rescue activities. Though these situations

are investigated by the SBI, CI may be required to conduct a parallel investigation if the death concerns possible violations of administrative rules, policies, or procedures. CI will coordinate with the Fire Chief, City Legal Department, and/or the appropriate law enforcement agency as stated in paragraph 1.I.1 above.

In addition, the Fire Chief may request a CI investigation any time the Chief believes it is needed or is appropriate.

#### **1.I4 TASER DISCHARGE AND BI-ANNUAL CHECKS**

It will be the responsibility of Director of City Investigations to conduct random inspections of departmental-owned TASER units. Inspection will include the download of records contained in a TASER memory and the comparison of the downloaded information to past deployments. A report of the information will be sent to the Chief of Police on an annual basis.

#### **SECTION 1J – REQUIREMENT TO DISARM BEFORE INTERVIEWS**

Any Police or Fire Department individual who is the subject of an investigation will be required to disarm before any interview takes place. Firearms will be secured in the CI office using the firearm lockboxes provided or may be secured by other means prior to entering the City Investigations offices.

Except for sworn law enforcement officers, firearms are not permitted in the CI office complex. Citizen witnesses will not be armed during interviews conducted in the CI offices. Exceptions apply for approved individuals with Mayor's authorization.

#### **SECTION 1K – BODY CAMERAS AND RECORDING DEVICES**

Body cameras and all individual recording devices (including cell phones, tape recorders, etc.) will be removed and/or turned off prior to any CI interview. These items may be secured in the lock boxes located in the CI office or secured by other means. During any CI interview, the only video and audio recording of the interview will be accomplished by the CI Investigator.

Note: The IO should check to see if any individual being interviewed has a "Smart" watch. This can be used as a recording device, and the IO will be required to have the interviewee remove the watch to place in the safe.



## Chapter 2

### Filing a CI Complaint

#### 2.1 OVERVIEW

This chapter explains the policy and procedures to be used when filing a complaint against the City of Montgomery, or an accusation of wrongdoing against any City employee. Department heads and supervisors should use this chapter to advise employees regarding the CI's Complaints and Investigations Program. City employees should read this chapter before filing a complaint with CI.

**City employees have the right to contact CI at any time to report suspected wrongdoing. No one may restrict an employee from contacting CI or reporting wrongdoing to a supervisor or more senior official.**

City employees have a duty to promptly report gross mismanagement; violations of law, policies, procedures, or regulations; any injustice; abuse of authority; inappropriate conduct; or misconduct (as defined by this instruction); and a deficiency or like condition through appropriate supervisory channels, through a CI complaint, or through an established grievance channel.

All employees shall promptly advise MPD of suspected criminal activity or fraud. CI will coordinate with the City Legal Department and/or law enforcement as necessary. If required, law enforcement and CI investigations may be conducted in parallel.

Complainants should attempt to resolve personnel complaints at the lowest possible level using supervisory channels before addressing them to a higher-level or CI.

The lowest level supervisor can often resolve complaints more quickly and effectively than a higher-level supervisor not familiar with the situation or the people involved.

The CI system should be used when there is fear of reprisal or when the employee believes a referral through supervisory channels would be futile.

When complaints are addressed to a higher level (Mayor, Cabinet member, etc.), the CI Department will determine the appropriate level or organization for investigation.

The complaint may be referred to the complainant's department head for an attempt at resolution before a CI investigation will be initiated.

Any case referred by CI back to a department shall be tracked until completed. The department shall report their findings/actions to CI as soon as practicable.

## **2.2 COMPLAINTS NOT APPROPRIATE FOR THE CI SYSTEM**

The CI Complaints Resolution Program may not be used for matters normally addressed through other established grievance or appeal channels unless there is evidence that those channels mishandled the matter or process.

This policy does not prevent an employee from exercising rights of review and appeal as provided by personnel law and rules.

If a policy directive or instruction provides a specific means of redress or appeal of a grievance, complainants should exhaust those procedures before filing a CI complaint.

Complainants must provide relevant evidence that the process was mishandled or handled prejudicially before CI will process a complaint of mishandling.

Mere dissatisfaction or disagreement with the outcome or findings of an alternative grievance or appeal process is not a sufficient basis to warrant a CI investigation.

## **2.3 COMPLAINTS OF A MINOR NATURE NOT INVESTIGATED BY CI**

In general, minor rules violations or minor infractions or deviations in work practices that will not result in a suspension or termination will not be investigated by CI. For example: parking violations, rudeness (in person or on the telephone), littering, etc. These types of complaints should be handled by the employee's supervisor and/or chain-of-command.

When a complainant makes an allegation to CI that involves a minor violation or infraction, the CI Director will contact the employee's department head or supervisor and relay the complaint to them for action. The employee's department head and/or supervisor will document any action (i.e. verbal or written counseling, etc.) and provide a letter back to CI (within 30 days) regarding any action (or no action) taken.

## **SECTION 2A – COMPLAINANT’S RIGHTS AND RESPONSIBILITIES**

### **2.A1 COMPLAINANT’S RIGHTS**

Complainants have the right to:

1. File a CI complaint at any level without going through their supervisory chain
2. File a complaint with CI without fear of reprisal
3. Request withdrawal of their CI complaint; however, the request for withdrawal must be in writing. Only the CI Director and/or Mayor will approve withdrawal of a complaint after it has been submitted to CI.

Complainants may submit complaints anonymously. Anonymous complainants obviously will not receive a response.

Any individual can submit a complaint if they reasonably believe inappropriate conduct has occurred or a violation of law, policy, procedure, or regulation has been committed, even if the complainant is not the wronged party or was not affected by the alleged violation. Individuals may also submit a complaint on behalf of another individual (third party).

Citizens may file complaints against the City or any City employee for alleged rules violations.

Third-party complainants are not entitled to a response regarding the substance of alleged wrongs not directly affecting them. Third-party complainants are entitled to have receipt of their complaint acknowledged.

Completed Reports of Investigation (CI cases and Legal cases) are not to be copied or provided to complainants or subjects. After the appropriate administrative action has been completed, all reports will be returned and will remain on file with CI and/or the City Legal Department. They will not be filed or included with any other department or personnel records.

Employees may request a copy of their case file by submitting by a Request for Public Records to the Office of the City Clerk, Records Management Service. The Request for Public Records will be documented in the Clerk’s office and then forwarded to the City Legal Department. The City Legal Department will be

responsible for obtaining the records for review and release subject to state and federal laws

Complainants will not be reprimed against for making or planning to make a protected communication (complaint) to CI, a supervisor, or senior official. (See Chapter 3 for investigation procedures regarding protected communications and reprisal.)

## **2.A2 COMPLAINANT'S RESPONSIBILITIES**

Complainants must submit CI complaints within sixty (60) days of the alleged wrongdoing or discovery of the alleged violation.

CI complaints not reported within sixty (60) days will normally be dismissed unless the complainant is able to demonstrate he/she was unable to meet the time requirements due to unforeseen or extraordinary circumstances and such circumstances justified the delay. The final decision to investigate a complaint older than 60 days rests with the CI Director, unless the investigation is specifically directed by the Mayor or the City Legal Department.

CI complaints not reported within sixty (60) days may seriously impede the gathering of evidence and testimony. The CI Director may dismiss a complaint if given the nature of the alleged infraction and the passage of time, there is reasonable probability that insufficient information can be gathered to make a determination. Unless approved by the CI Director, requests for investigations will not be conducted if not reported within six months of an alleged incident or wrongdoing.

NOTE: There may be other situations to modify these time constraints.

Complainants must cooperate with investigators by providing factual and relevant information regarding the issues and/or allegations. Complainants will sign the Witness Acknowledgment Form prior to any interview.

If complainants do not cooperate, the CI Director may dismiss the complaint if the lack of information leaves CI unable to conduct a thorough complaint analysis.

Note: Employees must sign a "Garrity" oath/form and Witness Acknowledgment Form prior to the CI interview.

Complainants providing information to the CI Department must understand they are submitting official statements within official City channels. Therefore, they remain subject to punitive action (or adverse administrative action) for knowingly making false statements and for submitting other unlawful communications.

Other than the City Legal Department, no person, including supervisors and/or department heads, may request information regarding the substance or other matters discussed or presented during a CI interview. Persons interviewed by CI shall immediately report any such inquiry to CI, and disciplinary action may be recommended by CI to the Mayor and/or Cabinet member against the person inquiring about the interview.

### **SECTION 2B – HOW TO FILE A CI COMPLAINT**

To make a complaint or allegation of misconduct you may:

Report the incident by accessing and submitting the complaint form online at [www.montgomeryal.gov](http://www.montgomeryal.gov). You may also visit the CI office to complete the complaint form in person. Complainants will be required to fill out the CI standard complaint form.

To report an incident in person to CI, the office address is: 300 Water Street, Suite 214, Montgomery, AL. 36104.

**NOTE: UNLESS THE COMPLAINANT WISHES TO REMAIN ANONYMOUS, THE COMPLAINANT MUST GIVE INFORMATION SUFFICIENT TO IDENTIFY HIM/HER ALONG WITH CONTACT INFORMATION INCLUDING TELEPHONE NUMBER AND ADDRESS.**

Employees and citizens may complain anonymously. CI will accept verbal or written complaints from individuals who wish to remain anonymous. The CI Director and/or investigating officer will determine if sufficient information can be obtained to process the complaint. In addition, the case could be weakened if the person does not wish to appear at any follow-up hearings that may be initiated after an investigation is completed.

Employees may report wrongdoing or complain to a supervisor who may then direct the employee(s) to CI in accordance with the procedures described in this directive.

Complaints made to any department will be forwarded to the Office of City Investigations for further action.

Complainants will be contacted by CI as soon as possible after the complaint has been processed in accordance with this directive.

### **2.B1 WHEN TO FILE A COMPLAINT**

Use these procedures when you have a complaint you reasonably believe is appropriate for CI resolution.

A complaint form must be completed and may be obtained in person from the Office of City Investigations or from the City of Montgomery website at [www.cityinvestigations@montgomeryal.gov](http://www.cityinvestigations@montgomeryal.gov).

### **2.B2 EMPLOYEE ACTIONS**

Employees should determine if the complaint should be filed with CI by reviewing Section 2A of this chapter. Employees should determine: (1) you are unable to resolve your complaint using supervisory channels and (2) you believe inappropriate conduct has occurred or a violation of law, policy, procedure, or regulation has been committed. Employees should then initiate a complaint as follows:

- Complete the Complaint Form
- Briefly outline the facts and relevant background information related to the issue or complaint
- Briefly list the allegations of wrongdoing in general terms and provide supporting narrative detail and documents later when interviewed. Allegations should be written as bullets and should answer the following:
  - Who committed the alleged violation?
  - What violation was allegedly committed?
  - What law, regulation, procedure, or policy do you believe was violated?
  - When did the alleged violation occur?
- Submit the completed form to CI and schedule a follow-up interview with a CI investigator to discuss the complaint.

If employees of the Office of City Investigations are named in the complaint, the CI Director and City Attorney (City Legal Department) will determine how the case will be investigated. In that case, the CI Director and/or the Mayor will authorize an independent investigation not conducted by CI personnel. Any person(s) appointed to conduct such an investigation will do so following the policy and procedures contained in this instruction handbook.

### **2.B3 AFTER THE COMPLAINT IS FILED**

The complaint will be examined for completeness, and when possible, the Complaint Form will be notarized and accepted by CI as an official complaint. Normally, a City investigator will then be assigned to interview the complainant. Next, CI will perform a Complaint Analysis and Investigation Plan to determine the proper course for the investigation. Once an official allegation is approved by the CI Director, the investigation will begin after proper notifications have been completed.

The CI Director will sign a Notification Letter to inform the applicable department head and Cabinet member and/or the City Legal Department of the allegation(s) and when the investigation will begin. In addition, a CI investigator will be appointed in writing by the CI Director. The CI investigator will schedule the interviews for the assigned case in accordance with the required timelines. (See Paragraph 3.A4.)

***NOTE: During the investigation, all information will remain CONFIDENTIAL.***

CI investigators will “swear in” those who are interviewed and record all interviews. Individuals being interviewed will not be allowed to record their own interview, or discuss their interview with anyone.

NOTE: (1) A “subject” is an individual against whom allegations of a non-criminal wrongdoing have been made and the individual who is the focus of an investigation. Unless specifically approved by the CI Director, a subject will not be allowed to have an attorney present during the interview. If an attorney is present, the attorney will only be allowed to monitor the interview and will not answer questions for or advise the subject being questioned. (2) A “suspect” is an individual suspected of a criminal offense. Suspects would be allowed to have an attorney present during an interview. (3) A “witness” is any individual who is interviewed during the course of an investigation, and the same rules regarding “subjects” apply. CI investigators will

consult with the City Legal Department if there is any question regarding the status of an individual being interviewed.

**WARNING:** Employees who divulge the contents of an interview, discuss case investigation information outside CI channels, interfere with the investigation, or fail to tell the truth will be subject to severe consequences, up to and including, termination of employment. These violations will be reported to the employee's department head for appropriate disciplinary action in accordance with the City's Progressive Discipline Policy.

Unless the individual is a "suspect" of criminal activity, an attorney representing a witness will not be allowed in the room during the interview. The CI Director may authorize an attorney to attend a witness interview, but the attorney may only monitor the interview and will not answer for or advise the witness. Interviews will normally take place in CI office spaces, not the individual's work environment. The CI Director must approve interviews elsewhere.

CI will attempt to complete the investigation within forty five (45) business days. When the investigation is complete, the Report of Investigation will be shared with the employee's department head, supervisor, and/or the City Legal Department for follow-up disciplinary or legal action.

The complainant will receive feedback in the form of a letter or e-mail from the CI Director confirming the investigation is complete. The Report of Investigation will remain **CONFIDENTIAL, For Official Use Only**. See paragraph 1.D.12 for disposition of reports. Complainants, witnesses, and subjects of an investigation are not authorized to read or receive the Report of Investigation.

## **2.B4 PROCEDURES FOR SCHEDULING CITY EMPLOYEE INTERVIEWS**

The CI Investigator assigned to the case is responsible for scheduling interviews. Normally, the complainant will be interviewed first, any witnesses will be interviewed next, and the subject will be interviewed last.

Cabinet members (Chief of Staff) will first receive an official letter from the CI Director naming the subject(s) via an e-mail sent with a return read receipt to be investigated and witnesses to be interviewed. Normally, City employees will not be interviewed before the CI Director's Notification Letter is delivered to the department head. Any City employee who is named as a witness or subject in the case will be scheduled for an interview through their supervisor. CI will attempt to



minimize disruption to an individual's work schedule. If required, CI may directly schedule any employee without coordination with the employee's supervisor in accordance with paragraph 1.D1 of this handbook.

#### **2.B4A EMPLOYEES REFUSING TO INTERVIEW**

Because City Investigations conducts administrative and not criminal investigations, City employees may not refuse to be interviewed. City employees will comply with all interview requests from CI. Any City employee who refuses to be interviewed or intentionally provides false information will be subject to dismissal. All employees interviewed will sign the Witness Acknowledgement Form and the Garrity Oath Form.

#### **2.B4B EMPLOYEES RIGHT TO REQUEST A CHANGE OF INVESTIGATOR**

Employees have the right to a fair and unbiased investigation of any allegation. A City employee may request a change of the assigned case investigator if the employee believes a previous working relationship or previous contact with the investigator may affect the investigator's objectivity. In all cases, any change of an assigned investigator must be approved by the CI Director.

#### **2.B5 PROCEDURES FOR SCHEDULING CITIZEN INTERVIEWS**

Citizens who are not employees of the City of Montgomery cannot be required to testify. Non-employee citizens who are called for an interview will be informed their cooperation is voluntary, and they cannot be subpoenaed to testify.

The CI investigator will first attempt to contact individuals by: (1) telephone, (2) e-mail, (3) U.S. mail, or (4) U.S. registered mail, if necessary. If no response or contact is received after ten (10) calendar days from the postmark, the individual will be eliminated as a witness.

Citizens who file claims against the City will be scheduled in accordance with paragraph 2B.5. If the claimant is represented by an attorney, the interview will normally be scheduled through that attorney. The interview may take place in the attorney's office. All claims against the City are investigated on behalf of the City Legal Department.

## Chapter 3

# Managing and Processing Complaints and Investigations

### SECTION 3A – OVERVIEW

This chapter instructs City investigators how to manage and process CI complaints and investigations and discusses the complaint/investigation lifecycle from receipt through the completed Report of Investigation. The City endorses a proactive oversight and follow-up system that achieves fair and efficient resolution of complaints.

### SECTION 3.A1 KEY TERMS

This section uses the following key terms: allegation, complainant, complaint, complaint analysis, complaint resolution process, contact, confidentiality, thoroughness, and timeliness. (Refer to Chapter 4 for the definition of these key terms.)

### 3.A2 PROTECTION OF INFORMATION

A key goal of the CI Complaints Program is to facilitate a complaint's resolution environment that promotes confidence in City leadership. Assurances that an individual's privacy will be safeguarded to the maximum extent practicable encourages voluntary cooperation and promotes a climate of openness in identifying issues requiring leadership intervention.

Specifically, CI has the responsibility to safeguard the personal identity and complaints of individuals seeking assistance or participating in any CI process such as an investigation.

Communications made to CI are privileged or confidential and may fall under the attorney-client privilege. (See Chapter 1.)

Some employees may believe they are automatically represented by the City Legal Department during a CI interview. **This is incorrect.** When interviewing employees, CI investigators must make it clear that the City Attorney's office does not represent them.

Persons who request anonymity or who express a concern about confidentiality will be informed of this policy. All personnel reviewing or processing CI information shall be briefed on this policy. All CI investigators and staff members are obligated to protect CI information when their tenure of service as a CI employee is completed. Failure to do so may result in termination of employment for the first offense.

The following guidance applies to all City employees and personnel at all organizational levels:

All personnel must protect the identity of complainants as described above. If a complaint is more appropriate for other supervisory or personnel channels it may be referred to them for action. In those cases, CI will advise the complainant of the referral.

CI may release the name of a complainant only on an official need-to-know basis. Normally, investigating officers will not divulge a complainant's name to a subject or to any witness or permit a witness to read the complaint without the CI Director's approval.

### **3.A3 POLICY ON MANAGING CI COMPLAINTS**

CI complaints will be proactively managed in a manner that facilitates efficient and effective accomplishment. CI complaints will be reported and resolved with due diligence, thoroughness, and in a timely manner. Investigation officers must document all complaints and adhere to the process timeline described in the following section.

### **3.A4 THE COMPLAINT RESOLUTION AND INVESTIGATIONS PROCESS**

To assist CI in managing complaints, the following tables describe actions required to resolve a complaint case from receipt through investigation to closure. The process is divided into three phases: complaint analysis, investigation, and quality review.

All complaints that result in an investigation should be conducted in a manner that balances timeliness and quality of the investigation. The goal is for ninety-five (95) percent of all cases that lead to investigation to be resolved according to the guidelines described below. Note: "Days" refers to normal "working days" or "business days," not consecutive calendar days, based on when the investigation begins, not when it is assigned to the investigator.

COMPLAINT ANALYSIS:	<2 DAYS
DIRECTOR REVIEW COMPLAINT ANALYSIS:	<2 DAYS
INVESTIGATION:	<36 DAYS
REPORT WRITING:	<7 DAYS
CI DIRECTOR'S REVIEW:	<4 DAYS
LEGAL REVIEW:	<5 DAYS
TOTAL PROCESSING TIME:	<55 DAYS

DEPARTMENTAL ACTION AFTER TRANSMISSION OF REPORT BY CI:  
REVIEW OF COMPLAINT: <5 DAYS

The assigned investigator should submit an extension letter to the CI Director anytime an investigation exceeds the timeline (55 total working days) specified above.

**3.A5 IF DISCIPLINARY ACTION IS TAKEN**

(FROM DATE OF TRANSMISSION OF REPORT):

CHARGES FILED:	<5 DAYS
DEPARTMENTAL HEARING:	<5 DAYS
REPORT MADE TO MAYOR AND CI:	<5 DAYS
MAYORAL ADMINISTRATIVE APPEAL:	<10 DAYS
DECISION:	<5 DAYS
TOTAL DISCIPLINARY TIME AFTER REVIEW OF COMPLAINT:	<30 DAYS

**3.A6 CLASSIFICATION OF CASES AND CASE NUMBERING**

This section defines and describes the various types of cases handled by the Office of City Investigations and provides for an indexing, numbering, and filing system for each.

**3.A6.1 CASE DEFINITIONS**

**I. CITY INVESTIGATION CASES (CI Cases)**

A CI investigation is initiated upon receipt of an allegation of misconduct where the misconduct is of a serious nature requiring a detailed investigation or to protect the interests of the City and to ensure compliance with rules and regulations. Any CI case can be initiated by the Mayor, CI Director, department head, supervisor, employee, or citizen.

### Numbering of Cases:

Each case will receive a unique file number. Cases will be numbered consecutively beginning with the first case received each calendar year and continuing through the last case of each calendar year. Each case will begin with a 2-digit number representing the year. Next will be letters "CI" then the case number. (Example: 07-CI-014 would be the fourteenth CI investigation case investigated in 2007.)

### Electronic Computer Indexing and Filing:

After a CI case has been concluded with the City Legal Department, the completed file will be given to the CI Administrative Assistant who will enter the names of all parties involved with provided computer software currently being used by CI.

Completed cases will then be filed in numerical order, by year.

## II. LEGAL CASES (LD Cases)

A Legal investigation will be initiated upon request from the City Attorney to the CI Director following receipt of an allegation of misconduct where the misconduct may lead to a lawsuit or anticipation of litigation. These cases will be assigned/directed using attorney-client work privilege.

CI will inform the appropriate department, via memorandum, of the allegation of misconduct.

Upon receipt of such information, a case file will be established which will contain all pertinent information of the action and any requirements for information.

Cases will be numbered consecutively, as with the CI cases, except there will be the letters "LD" in place of the letters "CI" (Example: 10-LD-001). Legal cases will be designated as such in numerical order.

Claim cases are defined as those claims filed against the City through the City Clerk's office and will be numbered by the City Clerk's Office.

Legal Reports of Investigation will be addressed to the City Legal Department. Completed cases will be given to the CI Administrative Assistant who will enter the

names of all parties into the data file and file the cases consecutively, by number, for each calendar year.

### III. DEPARTMENTAL TRANSFER CASES (Numbered as CI Cases)

These cases include allegations of misconduct on the part of an employee where the misconduct is of a minor nature. Departmental investigation cases usually result in corrective counseling or remedial training rather than more formal disciplinary actions. Examples of misconduct complaints usually included in this category are rudeness, discourtesy, or improper procedure. These types of cases will usually be returned to the individual's City department for supervisor investigation/action. **CI does encourage a coaching/training concept for employees having minor issues when possible.**

Departmental investigations will be conducted in accordance with applicable personnel policies and procedures.

Occasionally, a departmental investigation case will result in a supervisory action which requires a CI case analysis. A transferred case will be logged and the original informal case file will be maintained and cross-referenced with the original CI case.

Each case will begin with a 2-digit number representing the year and logged as a CI Case.

Completed departmental level cases will be given to the Administrative Assistant for entry into computer files.

The names of complainants will be indexed in departmental investigation cases.

Departmental investigation cases will be filed in numerical order for each calendar year.

### IV. INFORMATION ONLY

Definition: Information Only are those contacts with the public where a question is asked concerning conduct or procedures, or a perceived complaint is made which is actually a procedural question and does not fall into one of the above categories.

A brief synopsis of the information concerning the information only data can be entered into the computer.

Information only cases will be numbered the same as with other CI Investigation Cases previously described except the letter "I" will be used. (Example: 07-I-014)

“Information Only” will be entered in the data file for each employee involved for training and statistical purposes.

## V. CLAIMS CASES

Claims cases are received by the City Clerk’s Office, transferred to the City Legal Department, and then are assigned to be investigated by City Investigations. The claim case number is provided by the City Clerk’s Office. When claim investigations are completed, they are sent to the City Legal Department for processing. City Investigations will file completed (investigated) claims electronically by the assigned claim case number and the individual’s name who filed the claim.

If during the investigation of a claim, the CI investigator determines a violation of policy, directive, or procedure may have occurred, the CI Director and/or City Attorney will be notified. The Director or City Attorney will then verbally notify the applicable department head who will determine if any additional investigation is warranted.

### **3.A7 POLICY FOR COMPLAINT ANALYSIS AND INVESTIGATION PLAN**

In each case, IOs will conduct a thorough complaint analysis to determine the appropriate complaint resolution strategy. A complaint analysis is always required and results in a dismissal, referral/transfer, investigation, or assistance. Complaints containing multiple assertions may require multiple resolution strategies.

### **3.A8 CONDUCTING A COMPLAINT ANALYSIS AND INVESTIGATION PLAN**

A complaint analysis is a preliminary review of assertions and evidence to determine the potential validity and relevance of the issues to the City and to determine what action, if any, is necessary within CI, supervisory, or other channels.

During the complaint analysis, the IO will use the complainant’s information to: (1) determine if the complaint is valid, (2) form the allegation(s), and (3) determine which rules, regulations, laws, or policy may have been violated.

A complaint analysis and investigation plan is always required for non-departmental requested investigations and guides the IO in developing a complaint resolution strategy. A Complaint Analysis and Investigation Plan will always result in one of the following course of actions: referral, investigation, unfounded, closure, transfer,

or assistance to the complainant. The IO will present the complaint analysis to the CI Director for approval.

The **single most important factor** in analyzing a complaint is to *clearly and concisely identify the complainant's assertions*. A properly framed allegation is a factual proposition to be proved or disproved during an investigation, and which, if true, would constitute wrongdoing. *If an allegation cannot be properly framed, an investigation is inappropriate*. Framed allegations must contain the following:

1. Who committed the alleged violation?
2. What violation was committed?
3. What law, regulation, procedure, standard, or policy may have been violated?
4. What policy supports the decision of the allegation?
5. When did the alleged violation occur?

A properly framed allegation is constructed as follows:

Who (\_\_\_\_\_) improperly did what (\_\_\_\_\_) in violation of what standard (\_\_\_\_\_), and when (\_\_\_\_\_)?

NOTE: For each allegation, there may be multiple rules, laws, or policy violations that could result in additional allegations. Sometimes, a violation of one regulation would automatically mean that a violation of another regulation or policy occurred. It may not be necessary to add additional allegations if a substantiated allegation would be redundant with the others. In these situations, the CI Director will consult with the City Legal Department before approving the IO's complaint analysis and investigation plan.

### **3.A9 INITIAL IO ACTIONS**

1. Log complaint into the CI database (CI Administrative Assistant will normally do this.)
2. Mark any documents (such as the complaint form or other information) "COMPLAINANT PROVIDED" in the lower right-hand corner of each page.
3. Contact complainant in writing, by e-mail or telephone, or in person within two business days to acknowledge receipt (unless complaint is received directly from the complainant).



Do not combine allegations without CI Director's approval. If the complainant asserts multiple violations on different occasions, make each of these a separate allegation. The same rule applies when the complaint contains multiple subjects, occurrences, or violations of standards.

If a complainant alleges a supervisor or senior official is guilty of reprisal, a complaint analysis into allegations of reprisal will be completed in accordance with the "acid test" question format. (See Section 3D.)

### **3.A10 REQUIREMENTS FOR INVESTIGATION PREPARATION**

The CI Director will ensure IOs are trained before they begin an investigation by using this instruction and other resources. In addition, CI IOs will discuss any unique investigative requirements with the CI Director and/or the City Attorney.

The CI Director will assist the IO in framing the allegations, if necessary. This may also require coordination with the City Legal Department. The IO will complete an investigation plan and submit it to the CI Director for approval.

For each investigation, each IO will be given an official appointment letter from the CI Director that initiates the case.

IOs must review and/or refine all allegations and supporting documentation as part of their investigative preparation. All applicable regulations/directives/policies should be identified and reviewed at this time.

Based on the review of the allegations, supporting documentation, and applicable directives, the IO should complete a complaint analysis and investigation plan which will be discussed with the CI Director.

### **3.A11 CI DIRECTOR'S ROLE IN COMPLAINT ANALYSIS AND INVESTIGATION PLAN**

The Director, Office of City Investigations, shall assist CI investigators by:

1. Analyzing complaints to identify/clarify allegations of wrongdoing
2. Assisting the IO in framing or re-framing allegations prior to investigation, if necessary
3. Approving the IO's complaint analysis and investigation plan
4. Providing advice and assistance to IOs during the course of investigations, as needed, but *not* investigate for the IO

After the case investigation is completed, the CI Director will assist IOs by providing a review and approval of CI Reports of Investigation to ensure the “Findings of Fact” are adequately supported by the preponderance of evidence obtained during the ROI process. The CI Director will then ensure a legal review and approval is completed by the City Legal Department.

Note: Before any report is considered “final” a structural and organizational review of the case report and all case documents will be completed by the CI Administrative Assistant.

## **SECTION 3B – FACT FINDING**

### **3.B1 KEY TERMS**

This section uses the following key terms: authentication, evidence, hand-off, investigation, preponderance of the evidence, statement, summarize testimony, suspect, subject, testimony, and witness. (Refer to Chapter 4 for the definition of these key terms.)

### **3.B2 POLICY ON INVESTIGATING COMPLAINTS**

All CI investigations are conducted in accordance with Chapter 3 of this instruction and other applicable laws, regulations, directives, and policies concerning the specific allegations.

CI investigations are *administrative* in nature--they are **fact finding** rather than judicial proceedings. Although they may assess a subject’s personal responsibility with respect to an alleged wrongdoing, CI investigations *do not* use the criminal standard in which proof “beyond a reasonable doubt” is required.

Rather, the standard of proof that applies is proof by a ***preponderance of the evidence***. This is the yardstick the IO will use throughout the investigation to determine how much evidence is enough to support or refute the allegations in the case.

### **3.B2A PRIORITY OF CI INVESTIGATIONS**

Complaints and investigations of wrongdoing will be completed in accordance with the instructions and report formats explained in this chapter and Chapter 5.

The CI investigation will determine if a rule, policy, procedure, or directive has been violated and will begin after approval of the CI Director. However, the CI investigation will remain *subordinate* to a related criminal investigation. Normally, the criminal investigation, completed by the MPD's Criminal Investigation Division (CID), Alabama State Bureau of Investigation (SBI), or other authority will be finished *before* beginning the CI investigation. Any exceptions to this policy will be coordinated by the CI Director with the City Legal Department.

Information uncovered by a criminal investigation, such as evidence, statements, records, etc., may be used and become part of a CI investigation. CI will coordinate with the the City Legal Department before attempting to obtain any information used during a criminal investigation.

### **3.B2B CLAIMS AND COMPLAINTS**

Claims against the City of Montgomery are filed with the City Clerk's Office and passed through the City Attorney's office to CI to investigate. Claims usually involve a citizen's direct request for monetary reimbursement by a request through an attorney or filed without the assistance of an attorney. In either case, the City Legal Department will receive the claim, evaluate the claim and issues, answer any pre-investigation questions, and coordinate with CI as necessary.

Note: Claims older than 6 (six) months will not be processed without just cause.

Interviews conducted to investigate claims may be conducted in the presence of the claimant's attorney. In some cases, the interview will be conducted in the claimant's attorney's office. However, the attorney will not answer questions for the claimant.

A claims report of investigation will be written in a narrative form and addressed to the City Attorney. All reports will be personally delivered to the Legal Department by the CI staff.

Any claim filed will be checked with the 311 registry. If a claim has been filed, and a 311 record has not been established, the CI Investigator will complete a 311 call for notice of issue. (I.e. *Sidewalk, tripping hazard*)

### **3.B2C LEGAL INVESTIGATIONS**

Legal investigations are usually initiated in one of two ways. First is a direct request from the City Legal Department where a lawsuit has not yet been filed, but the City

Attorney believes the investigation should be done *in anticipation* of legal action by the complainant. Next is when a complaint investigation is already in progress and the City Legal Department receives notice the complainant may pursue legal action against the City, or the investigation is converted to a legal investigation based upon the recommendation of a representative of the City Legal Department.

If a complainant's attorney refuses to allow CI to interview his/her client, CI will document this with an official response letter to that attorney.

In either case, the Report of Investigation will be done in accordance with the instructions for legal reports contained in this chapter, except the ROI will be addressed to the City Attorney, not the department head. The City Attorney will be responsible to release the Report of Investigation to the department head. The CI Director will send a letter to the Cabinet member when the ROI has been completed and sent to the Legal Department.

### **3.B2D LAWSUITS**

In some cases, a complainant will file a lawsuit with the City Attorney's Office and not complain to City Investigations. **When a lawsuit is filed before a complaint is received, CI will *not* investigate the case.** The City Legal Department will be responsible for case disposition. Any information obtained by City Investigations will be forwarded to the City Legal Department.

### **3.B3 CI DIRECTOR'S RESPONSIBILITIES DURING CASE INVESTIGATIONS**

The Director is responsible for managing the investigative process. The CI Director must assist the IO in solving investigative challenges (i.e., coordinating with City supervisors, etc.) while managing the investigation's quality and schedule. It is the CI Director's responsibility to ensure the Report of Investigation is completed on time and meets qualitative and legal standards. Specifically, the CI Director:

- Is the mayor's designee and *appointing authority* for investigations on behalf of the mayor and will assign cases to ensure a workload balance among investigators
- Must provide the IO an Appointment Letter describing the scope of investigation, authorizing the collection of evidence, and setting the suspense date for completion

- Must assist the IO as required in the complaint analysis phase
- Ensure the IO is properly trained
- Assist in scheduling appointments with key supervisory and support staff, technical advisors, including the City Legal Department, as necessary
- Ensure the IO has suitable workspace, computers, administrative support, and technical assistance, etc.
- Approve the IO's Complaint Analysis and Investigative Plan, identifying key milestones, standards, witnesses, evidence, and other administrative requirements
- Assist in coordinating and/or facilitating evidence collection, if necessary
- Review the proposed witness questions and associated rights advisement, if necessary
- Remain "neutral" during the IO's investigation and not investigate for or assist the IO in any way that would jeopardize the objectivity of the investigation
- Provide the quality and legal review of the ROI when completed and sign the ROI indicating approval of the investigation
- Provide the approved ROI to department heads, City supervisors and/or the City Legal Department for action

### **3.B4 RESPONSIBILITIES OF CI-APPOINTED INVESTIGATING OFFICERS**

The Investigating Officer:

- Will use this instruction for proper guidance on how to conduct an investigation
- Must acknowledge receipt of the appointment letter signed by the CI Director
- Must advise the CI Director immediately of any personal relationships or other factors that may affect his/her impartiality

- Must begin the investigation without any preconceived notions (IOs will never take sides with any party and must be impartial, unbiased, and objective.)
- Must investigate the complaint, **not** the complainant (Keep the investigation focused on the allegations in the complaint and not the person making the complaint.)
- Must interview the complainant **first** in order to re-clarify the allegations and obtain specific details to help with the investigation
- Must protect information in accordance with Chapter 1 of this instruction
- Must obtain the CI Director's written permission if they believe they must release the complainant's name to gain evidence or testimony
- Must report the results of the case only to the CI Director and/or the City Legal Department
- **Must not** comment to any complainant, subject, or other witness regarding their opinions, findings, conclusions, or recommendations during or after completion of the investigation
- **Will not** provide copies of testimony to complainants, subjects, or witnesses (However, if a subject/witness requests case file information, refer them to the City Clerk's Office.)
- Will explain to subjects, complainants, and witnesses that every effort will be made to maintain confidentiality
- Should not be involved with activities that would interfere with the timely completion of the case
- Will consult with the CI Director and read this instruction and all applicable instructions and directives before beginning an investigation
- Will complete a Complaint Analysis and an Investigative Plan identifying key milestones, standards, witnesses, evidence, and administrative requirements and obtain the CI Director's approval

- **Will not** publically comment (using any media) on cases or release confidential information related to any CI case, Legal case, or Claim case without authorization from the CI Director and City Legal Department

### **3.B5 GATHERING EVIDENCE**

Evidence is information that tends to prove or disprove the existence of a fact. Evidence comes in many forms. It can be written, verbal, electronically stored, direct or circumstantial, relevant or irrelevant, first-person or hearsay.

**Documentary Evidence:** Most evidence is written documentation. During the course of investigations, IOs normally collect copies of documents, records, and other physical evidence to aid them in their duties. Assuming it is authentic, documentary evidence gives the investigator a snapshot in time.

One way to further verify the authenticity of a document is to have it identified by its author, especially in the case of correspondence, personal notes, and computer records. This process is known as authentication and must be referenced in the final report if the document has been so verified.

**Computer Records:** Data contained on computer hard drives, local area networks, e-mail systems, disks, etc., are considered to be documentary in nature but pose special challenges in accessing. Obtaining access to this information must always be coordinated through the CI Director and/or the City Legal Department.

**Testimony:** The other major form of evidence is information presented by a live witness in the form of testimony. Normally, the bulk of evidence during an investigation is collected in this format and will be discussed separately in this section.

**Hearsay:** Hearsay is a statement heard and repeated by a third party as the truth. In other words, the third party is telling the IO that the content of the statement is true. Although IOs may consider evidence obtained as hearsay, whenever possible, an IO should always try to talk to the actual witness who made the statement, especially if they are reasonably available, and the statement is important.

### **3.B6 INTERVIEWING WITNESSES**

The bulk of evidence collected during CI investigations will normally come from witness testimony. After properly framing the scope and purpose of the

investigation, the next most important aspect is the preparation of intelligent, well-planned interrogatories. Effective, cogent interrogatories can only be accomplished through thorough preparation.

NOTE: Witness interviews will normally be conducted in the CI Office, not the individual's work area. The CI Director must approve any interviews not conducted in the CI office spaces.

A witness' status will determine how they will be interviewed. For example: The complainant is a key witness who must be interviewed **first** to clarify allegations and focus the investigation.

The subject is equally important since he/she is the one against whom the allegations have been made. This person should normally be interviewed **last** and given an opportunity to respond to the specific allegations. Additionally, they should be given a reasonable opportunity to respond to significant adverse information that may come about subsequent to the subject's initial interview.

An expert witness is someone with special knowledge and expertise in a particular subject matter. They may be used as consultants for background information or as a regular witness during the investigation. Because of their special expertise, their testimony is normally given more weight than the testimony of non-experts in their area of specialty.

IOs should not allow the testimony of an expert witness to control their final findings; this remains the ultimate responsibility of the IO.

Character witnesses are people who can verify the reputation of a particular person for certain conduct or personality traits (e.g., honesty, violence, etc.).

Regardless of their status, all City employee witnesses interviewed during investigations **must** be sworn and read/sign their Garrity Oath Form and Witness Acknowledgment Form. Citizen witnesses will read/sign the Citizen Witness Acknowledgement Form. This puts witnesses on notice that the investigation is a serious matter, and they are expected to testify truthfully, or there may be serious consequences.

### **3.B6A POLYGRAPH EXAMINATIONS**



Normally, witness/subject polygraph examinations are not required for City Investigations. However, an independent polygraph of a witness or subject may be requested by an IO who believes it is required to complete an official investigation.

The following rules apply:

1. Only City employees may be polygraphed.
2. Polygraphs will be completed after the investigating officer has finished obtaining witness/subject testimony.
3. Polygraphs will be completed/conducted by an independent, certified polygraph administrator.
4. The CI investigator will not be present during polygraph questioning. However, the CI investigator will provide the polygraph administrator with a list of questions that may be asked of the witness/subject.
5. To request a polygraph, the IO will make a request to the CI Director. The CI Director will then make a formal request to the witness/subject's department head. The department head may then direct the individual(s) to complete the polygraph.
6. Failure of a witness/subject to complete a polygraph may result in disciplinary action up to and including termination of employment.
7. Polygraph results will be kept confidential and will not be the sole source used to substantiate or unsubstantiate an allegation. Polygraph results will be included with the totality of facts and testimony and applied to the **preponderance of evidence** standard. (See Paragraph 3.B12.)

### **3.B7 PRE-INTERVIEW (RECORDING DEVICES OFF)**

The pre-interview is an opportunity for the IO to relay to the subject or witness what to expect during the interview. Because most individuals interviewed are at least apprehensive, the pre-interview allows some time for them to relax.

The IO should consider “small talk” to try and relax the subject. Most subjects become concerned when they see a recording device (tape recorder). The IO should explain that everything will be recorded and possibly transcribed for later use. The IO should explain his/her role and that:

The IO is an impartial and unbiased fact-finder.

The IO's authority is delegated from the Mayor.

The subject may be asked to produce documents to support or refute testimony.

The IO must inform the subject of the following:

- You **MUST** tell the truth, and there are potentially severe penalties if you are untruthful.
- You must **NOT** discuss the interview with anyone, unless represented by an attorney.
- The report does not recommend discipline or punishment; it is designed to present findings of fact to a department head/supervisor for action.
- You **will not** receive a copy of the report. It will be treated as **CONFIDENTIAL** and will be given to your department head for action.
- If the report results in a **SUBSTANTIATED** finding, you will receive a redacted Report of Investigation from your department head.

### **3.B8 INTERVIEWS**

For each subject and witness, tailor the subject interview. Key questions should be thought out ahead of time. For suspect interviews, confer with the CI Director and/or the City Legal Department to ensure the use of the proper rights advisement needed.

Subjects/witnesses will be advised that they may submit additional relevant information for the IO's consideration within a reasonable time following their interview.

**Electronically record all witness testimony to accurately capture what was said during the interview. Do not allow witnesses to record the interview.** When the case is complete, all electronic recordings must be provided to the CI Director together with the completed ROI.

For storage, electronic testimony will be stored (burned) on to a computer disk (CD), hard drive, or kept in a permanent electronic storage device that will allow retrieval when needed. If necessary, testimony may be transcribed verbatim (word-by-word) from the complainant's, subject's, and key witnesses' recorded testimony. At the

discretion of the CI Director, nonessential summarized testimony may be acceptable, on a case-by-case basis or only portions of the transcribed testimony provided.

Sign all transcribed testimony to certify its validity. Add the following statement to the end testimony: "I certify the above to be a true sworn (or affirmed) testimony given to me on (date) at (place)."

For witnesses outside the local area, an IO may need to travel to meet and interview the witness or interview the witness telephonically. If the witness is interviewed telephonically, the IO must make arrangements to verify the witness' identity. The witness must be told the conversation is being recorded. However, the appointed IO will (when possible) interview all subjects or suspects in person.

If a witness' status changes during the course of an investigation to that of a subject or suspect, the witness must be re-interviewed and given an opportunity to respond to the suspected misconduct or allegations in light of their new status.

The CI Director will determine whether additional issues will be investigated separately and, if necessary, expand the scope of the investigation. If the scope of investigation is expanded, an addendum to the appointment letter must be completed. The IO will take no further action until consulting with the CI Director who will coordinate with the applicable department head and/or the City Legal Department.

Conduct the proper read-in/rights advisement for a subject/witness prior to the interview/re-interview. **The read-in/rights advisement is mandatory.**

**Before any interview begins, each City employee interviewed will read and sign two forms: (1) Employee Witness Acknowledgement Form and (2) a Garrity Oath Form. Citizens interviewed will read and sign only a Citizen Witness Acknowledgement Form.**

Witnesses who are City employees *may not* refuse to testify and may be subject to disciplinary action for refusing to testify or testifying untruthfully or incompletely. IOs will report such incidences to the CI Director, who shall take appropriate action in coordination with the City Legal Department.

### **3.B9 PERSONS PRESENT DURING AN INTERVIEW**

A typical interview will involve the investigating officer(s) and the witness/subject. The CI Director will approve any additional personnel present. The introduction of any unauthorized party into the process is a breach of CI confidentiality.

The subject employee's department head and/or supervisor will not attend any interview session.

Only a *subject* has the right to have an attorney present during an interview; however, the attorney must not be allowed to answer any question for the interviewee.

If the subject to be interviewed is also the *suspect* of an alleged crime related to the CI or Legal Investigation, the IO will coordinate with the City Legal Department and CI Director before any interview is conducted. Special consideration must be given in order to protect the individual's *Miranda* and *Garrity* rights.

When individuals interviewed are considered *subjects*, they may consult with an attorney but may not have an attorney present during the interview. Approval to have an attorney present during a witness or subject interview will be from the CI Director.

### **3.B10 POLICY REGARDING RIGHTS ADVISEMENTS**

If during the course of an investigation, the IO discovers information leading them to believe matters of a *criminal nature* have occurred and a witness or subject becomes a possible *suspect*, the IO must stop the interview and consult with the CI Director and/or the City Legal Department. In those cases, the administrative investigation will stop. The CI Director, IO, and the City Legal Department will confer to determine if a separate criminal investigation is appropriate.

In the event an analysis determines a possible ethics violation, City Investigations will conduct an administrative investigation collecting evidence. The subject (s) may not be interviewed and the case is constructed on the evidence only. This action is in conference with the City legal department.

### **3.B11 READ-OUTS**

During the read-out, the IO will explain that the subject/witness must not discuss the interview with anyone except their personal attorney.

### **3.B12 STANDARD OF EVIDENCE**

In the context of this directive, the standard of proof applicable to CI investigations is **proof by a preponderance of the evidence**. The “preponderance of the evidence” standard means:

- The IO is satisfied that the *greater weight of the credible evidence* supports the findings of fact.
- The IO has determined that the evidence supporting one side in the case is more convincing than that supporting the other.

The weight of the evidence supporting a conclusion is not to be determined by the sheer number of witnesses or the volume of evidentiary matter presented, but rather by the evidence which best accords with reason and probability.

The IO determines that it is *more likely than not* that the events have occurred.

IOs must be careful not to apply this standard too mechanically. Quality counts as much as quantity, and an IO may choose to believe one witness rather than five if the one is sufficiently credible, and the five are not. In addition, there is no way to measure the weight of a document against the testimony of a witness other than by applying the rules to analyze evidence discussed below.

### **3.B13 ANALYZING THE EVIDENCE**

Keeping in mind the standard being sought (preponderance of the evidence), IOs will follow a six-step process when analyzing the evidence collected:

1. **What are the allegations?** Review the allegations framed prior to starting the investigation. Do they still make sense? Framed allegations must be addressed in the report.
2. **What are the facts (what happened)?** *Facts are not* conclusions, but rather information and data from which the IO must draw logical conclusions. Facts are not always consistent and are often in dispute. The IO must analyze the evidence and use the *preponderance of the evidence* standard to make the tough call and arrive at logical/concrete decisions.

3. **What standards apply (what are the rules)?** Applicable standards should have been identified at the beginning when properly framing the allegations.

4. **Were the standards violated (was a rule, regulation, or policy broken)?** Once the standards have been identified, the IO must then decide whether the facts, taken as a whole, would lead a reasonable person to conclude the standards were violated. IOs should consult the CI Director when in doubt about whether a particular action violated policy, procedure, or standards. However, the final decision rests with the CI Director during the final approval process.

5. **Who violated the standards, and do any mitigating factors exist?** When assessing whether a certain individual violated particular standards, IOs should keep in mind the standard of proof by a preponderance of the evidence. The preponderance standard applies to factual determinations, determinations of intent, and ultimately to the IO's conclusion about whether the subject violated the standard alleged by the complainant and whether the violation constitutes wrongdoing.

6. **When did the improper behavior or conduct occur?** A key consideration is the availability of information or evidence to support the investigation. Memories fade, individual responsibilities change, personnel move to new job assignments, and documents are retired; yet the IO must determine what the facts were at a specific point in time. Additionally, the IO must determine the standards applicable at the time and the subject's status. The investigative scope cannot be all-inclusive; the focus is a specific set of events at a point in time.

### **3.B13.A DISCOVERY OF ADDITIONAL SUBJECTS DURING AN INVESTIGATION**

Occasionally during the analysis of the investigative evidence or during the analysis of investigative testimony, additional *subject(s)* may be identified. If this occurs, the CI Director will determine if the additional subject(s) will be included in the original investigation or if a separate Report of Investigation will be completed.

### **3.B14 CATEGORIES OF FINDINGS**

There are seven possible categories of findings for a CI investigation:

**SUBSTANTIATED:** A substantiated finding results when a preponderance of the evidence supports the complainant's allegation of a wrongdoing or violation of the City's regulation, procedure, or the City's policy or standard. The facts indicate that a violation of standards occurred.

**UNSUBSTANTIATED:** An unsubstantiated finding results when a preponderance of the evidence supports the conclusion that the alleged wrongdoing **did not** occur. The facts indicate no violation of standards occurred. When there is not enough evidence to support a finding of “substantiated”, then the finding must be “unsubstantiated” with an explanation as to why (or what) evidence was not available.

**UNFOUNDED:** An unfounded finding means that the allegations are not true.

**POLICY REVIEW:** A policy review finding means the allegation may be true or contain elements to support the truth; however the action of the agency or employee was consistent with agency policy, but the policy was deficient.

**CLOSED:** A case marked as “CLOSED” is connected to either Claim cases or Legal cases without an outcome attached to the case.

**WITHIN POLICY:** A case marked as “within policy” is defined as an officer-involved shooting and deemed as within the Use of Force Policy.

**OUT OF POLICY:** A case marked as “out of policy” is defined as an officer-involved shooting and deemed as out of policy in the Use of Force Policy.

### **3.B15 INVESTIGATION INFORMATION**

All Reports of Investigation should contain a standard “attorney-client, work product” or appropriate statement to limit the report’s distribution only to those who need to know. All investigations should remain confidential, and information should be treated as such by investigators, supervisors, and employees. Supervisors need to be informed regarding an investigation and be trusted to keep the information confidential. No detailed information will be released until the investigation is completed.

### **3.B16 FINDINGS OF FACT**

Each report shall state the “Review of Evidence”. The report of facts (evidence) must stand on its own. The employee’s department head and/or supervisor’s duty will be to act on the facts presented. (See Section 3.C9 for case closure instructions.)

CI Reports of Investigation will include a conclusion which restates the allegation(s) and summarizes the report findings based on the preponderance of evidence. The appropriate categories to be used are: Substantiated, Unsubstantiated, Unfounded, Policy Review, Closed, and Within Policy or Out of Policy (Officer-involved shooting cases).

### **SECTION 3C – POLICY AND PROCEDURES REGARDING REPORT WRITING**

#### **3.C1 REPORT FORMAT**

The “CI” ROI will consist of a cover page with a CONFIDENTIALITY notice. The main body of the report will consist of four sections labeled:

Section I, Tab A Authority and Scope  
Section I, Tab B Appointment Authorization  
Section II, Background and Allegations  
Section III, Interviews and Investigative Review of Evidence  
Section IV, Analysis and Conclusion  
Section V, Findings  
Section VI, Official forms and Evidence Exhibits

All CI investigations (and their findings) must be documented with objectivity, thoroughness, and in a timely manner. The ROI must maintain an impartial and balanced tone.

Unless the IO is providing a direct quote from testimony, the IO will avoid including adverbs or other modifiers in the report which may imply a bias toward the subject or witness. Reports must be facts-based. Two examples below illustrate this point.

1. Here is an example of an acceptable statement: “A review of computer records shows that on 7 June, 2009, Mr. Jones accessed a restricted computer and e-mailed a file to his personal computer. This violated rule #1 which states information must be used for official purposes only.” (Note: This statement is fact-based.)

2. Here is an example of an unacceptable statement: “A review of computer records shows that on 7 June, 2009, Mr. Jones *blatantly disregarded City rules* and accessed a restricted computer and *secretly and deliberately* e-mailed a file to his personal computer. *This flagrantly demonstrated a complete disregard for proper procedure and* violated rule #1 which states information must be used for official purposes only.” (Note: The words added in *italics* could indicate bias by the IO.)



Exclude any bias for or against the complainant, subject, or witnesses. **An ROI must be a stand-alone document.** All the essential facts, documents, portions of regulations, interviews, etc., must be included in the report so a reader can arrive at a determination without reference to information outside the report.

The ROI will address each of the framed allegations in the report.

The ROI will list all rules, regulations, or policies applicable to the allegation.

The ROI will list all witnesses interviewed regarding each allegation.

The ROI will state the “Findings of Fact” and include all appropriate evidence gathered, i.e., witness statements, summaries of statements, and/or written documentation.

The ROI will include an analysis explaining why the findings of fact substantiate or do not substantiate each allegation.

The conclusion of the ROI will contain a listing and statement of each allegation as: **SUBSTANTIATED, UNSUBSTANTIATED, UNFOUNDED or POLICY REVIEW.** (Not applicable to legal, claim, or officer-involved shooting cases)

**The ROI will not recommend specific punishments or administrative actions.** Such recommendations are beyond the scope and purpose of the ROI which is objective fact finding.

The CI Director approves the report by signing the first page of the ROI. The City Legal Department will provide the Legal Review and also sign the first page of the ROI.

If requested by the Mayor, any recommendations for discipline or follow-on administrative actions will be provided under separate cover by the City Legal Department. The CI Director **will not** be involved in these decisions.

All CI Reports of Investigation must comply with the standardized CI case file format described below.

### **3.C2 CASE FILES**

A case file is a standardized compilation of documents relevant to a CI complaint. During an investigation, the assigned IO will be responsible to safeguard all materials, testimony, etc. that will be used in completing the ROI. It contains the bulk of the IO's work and contains all the supporting evidence associated with the Report of Investigation. Following completion of the ROI, the case file will be turned over to the CI Administrative Assistant to organize and scan all documents to the share drive and prepare the case file for permanent filing or disposition. Case file information will not be filed in an individual's City personnel file.

IOs will not permanently (or personally) keep any information associated with a case file or Report of Investigation.

NOTE: Each case file will be a two-sided file folder with the following documentation setup:

**Left side:** Case evidence with each document marked as exhibit 1, 2, 3, etc.

**Right side:** ROI, copy of the Subject's ROI (if applicable), appointment letter, interview forms, all notification letters, and any other documents collected for the case.

All documents will be marked with a provided "Exhibit \_\_\_\_" stamp.

### **3.C3 REQUIREMENTS FOR PROGRESS REPORTS**

The CI Director may require the IO to provide a written progress report for all cases not finalized by the assigned suspense date. The progress report will be in a letter format to the CI Director and should include any reason(s) for the delay and a projected completion date. The progress report may be included in Section IV or the ROI, if necessary.

### **3.C4 REQUIREMENT FOR QUALITY REVIEW**

All Reports of Investigation will receive a quality review by the CI Director. The report will be reviewed for objectivity. The City Legal Department will then review the report for legal sufficiency before CI forwards the report for action. Page one of the ROI will be signed and dated by the CI Director and the City Legal Department indicating approval.

### **3.C5 ROI INTERNAL EDITING AND REWORK**

If the CI Director disagrees with the analysis and/or findings in the ROI, determines there is an investigative deficiency, or the investigation is administratively incorrect, the CI Director will return the case to the IO to be reworked.

If a case needs to be returned to the IO to be reworked due to deficiencies, the CI Director may prepare a letter explaining the specific problems and rationale along with the minimum requirements for sufficiency. Occasionally, there may be a case where the CI Director disagrees with the IO's findings and conclusions, but determines it to be administratively and investigative sufficient. The CI Director may decide not to return the case to the IO.

The CI Director has the final authority to approve or disagree with the findings and conclusions on a CI investigation. All disagreements, both with the findings and conclusions, must be documented in the ROI with an addendum to Section III as appropriate.

### **3.C6 ROI REWORK DUE TO NEWLY DISCOVERED INFORMATION**

The ROI is considered "final" when it is signed by the CI Director and presented to the department head for action. If prior to any disciplinary action taken by the department head and/or supervisor, new information is discovered which *may reverse the finds of fact*, the department head will return the report to the CI Director for possible rework. The Director may issue an additional Executive Summary report with changes in the outcome of the ROI.

For example, if it was discovered that a key witness was not interviewed, if additional documentation was revealed, or a supervisor has additional information that should have been included, the report will be returned and an addendum to the ROI will be written and added to Section III. The decision for rework rests with the CI Director.

### **3.C7 REQUIREMENT FOR LEGAL REVIEW**

At a minimum, all reports will be reviewed by a member of the City Legal Department for legal sufficiency when the CI Director approves the report and its findings. To ensure efficiency with delivering reports in a timely manner, the CI Administrative Assistant will track and monitor each report that is delivered to the City Legal Department for Legal Review on a spreadsheet to ensure cases are returned to CI within seven business days.

“Legal sufficiency” in this limited context is a review of the ROI (and supporting documentation if required) to determine whether:

1. Each allegation has been addressed.
2. The alleged violation of City regulations, procedures, or policies has been properly stated and determined.
3. The IO reasonably applied the preponderance of the evidence standard to support the finding(s).
4. The analysis is supported by sufficient evidence and consistent with the findings of fact.
5. The investigation complies with all applicable legal/administrative requirements.
6. Determine if any errors or irregularities exist, and if so, their legal effects, if any.

#### **LEGAL REVIEW PROCEDURE:**

1. CI will deliver completed investigative files to the City Legal Department for “Legal Review” prior to finalizing the report.
2. The Legal Secretary in the City Legal Department will log the file into the tracking spreadsheet and provide the file to the City Attorney for assignment.
3. The City Attorney will assign the file to an attorney to conduct a Legal Review of the case file.
4. Legal Review:
  - a. Review the draft report and evidence to determine if they support the findings of the report.
  - b. If there are questions about the investigation, the attorney will have a discussion with the investigator.

- c. If additional evidence is needed, an e-mail will be sent to the investigator outlining the request, and the CI Director will be copied on the e-mail.
- d. The evidence will be evaluated, and the standard for substantiating any findings will be preponderance of the evidence.
- e. It will be the responsibility of each attorney to be familiar with City of Montgomery and Montgomery City-County Personnel Policies and Procedures, so the attorney may identify potential policy violations that an investigator possibly overlooked.
- f. The City Legal Department's responsibility will not be to instruct an investigator to modify any findings, but rather to ensure the evidence supports those findings.
- g. Once the Legal Review is complete and CI has addressed any questions or concerns to the City Legal Department's satisfaction, the attorney will sign off on the Legal Review and return the file to the Legal Secretary.
- h. The entire investigative report will be provided to employees who have substantiated policy violations. After the Legal Review, the City Legal Department will determine if any portions of the ROI need to be **redacted**. The Senior Administrative Assistant at the City Legal Department will be responsible for redaction. If a report substantiates charges against more than one employee (subject), two separate redacted reports will need to be created so that each employee only receives information regarding the charges against him/her and no information regarding the other employee is included. Once the Senior Administrative Assistant has completed redactions, and the attorney has reviewed the report for accuracy, the redacted report will be saved in the Legal Department's share drive in the City Investigations folder. The City Attorney will be notified that redactions have been completed, and the City Attorney will provide an electronic copy of the redacted reports to City Investigations. All Legal Reviews should be completed and returned to the Legal Secretary within 48 hours.

5. The administrative staff will update the status of the file in the tracking spreadsheet and return the hard copy file to CI.

6. Should a department seek guidance on the disciplinary process, to the extent that staffing and workload permit, they will be referred to the attorney who conducted the Legal Review of the file. It is not the attorney's responsibility to recommend disciplinary action. We advise on procedural matters, what the pattern and practice

has been in similar situations, and what the range of punishment can be based on the progressive discipline policy, seriousness of charges, and disciplinary history.

7. If there is resulting disciplinary action that requires due process, as staffing and workloads permit, the reviewing attorney will be assigned to handle the administrative action.

**ROIs will not be delivered to department heads/supervisors without a Legal Review.**

### **3.C8 DIRECTOR APPROVAL**

Final approval of a CI investigation rests with the CI Director.

The CI Director will sign and approve the ROI in writing.

In rare cases where the CI Director disagrees with the IO's findings and conclusions, and agreement between the IO and CI Director cannot be reached, the CI Director will non-concur with the ROI in writing in an addendum to the ROI. This will be added to Section III of the report.

### **3.C9 ROI CLOSURE REQUIREMENTS**

Upon the Director's approval of a Report of Investigation, the mandatory actions required to close a case are:

1. Report of Investigation approved and signed by the CI Director and prepared by the CI Administrative Assistant for delivery to department head
2. Subject's department head and Cabinet member for applicable department notified of results (Results Letter via e-mail)
3. The department head and/or supervisor provided with the ROI to review
4. Subject(s) notified of results by department head and/or supervisor
5. The ROI is returned to CI and filed in the case folder to be stored

### **3.C10 NOTIFICATION REQUIREMENTS FOR COMPLETED INVESTIGATIONS**

The CI Administrative Assistant will notify the subject's department head, supervisor, via e-mail of the results of the investigation with a Results Letter from the CI Director. However, at the discretion of the CI Director, department heads and/or supervisors may first be informed via telephone call.

The Notification Letter must include a general description of the allegations and related findings. The letter must not contain the names of the complainants, witnesses, or other subjects of the investigation.

Reports of Investigation for "CI cases" will be **hand delivered** from CI by CI staff, typically the CI Director, directly to the subject's department head and/or supervisor. **ROIs will not be copied or sent electronically.**

The supervisor must, in turn, notify the subject(s) of the results of the investigation. This should be accomplished verbally and in writing to the employee.

The CI Administrative Assistant will maintain a list of all Reports of Investigation given to department heads and/or supervisors with the date the report was received. This will be tracked by the department head/supervisor and City Investigations until the ROI is returned to CI for filing. Normally, the report should be returned to CI within 15 days.

The CI Administrative Assistant will utilize an e-mail form of notification for cases involving City employees, including Fire and Police for the following case type:

- All case Notification Letters and Results Letters
- All City/Fire/Police: CI cases "Unfounded"
- All City/Fire/Police: CI cases "Unsubstantiated"
- All other notifications for citizen complaints will receive mail/e-mail notification when provided an e-mail address via the Complaint Form.

### **3.C11 DEPARTMENT HEAD RESPONSIBILITIES**

Department heads and/or supervisors are charged with taking whatever disciplinary action may be necessary following the Report of Investigation. In some cases, consultation or coordination with the City Legal Department will be required. ***The Office of City Investigations will not recommend, be involved with, or be consulted in any way regarding post-ROI disciplinary actions.***

Department heads should complete any required disciplinary action within 30 days of receipt of the ROI. All department heads will send the outcome of discipline for City employees, in writing, to City Investigations.

ROIs must be kept CONFIDENTIAL by the department head/supervisor and will not be distributed. ROIs must be returned by the assigned return date specified in the blue cover of the ROI and/or the Results Letter.

A Subject's Report of Investigation (green cover) is completed for all substantiated cases. This report is given to the subject of the investigation who was substantiated of policy charges and will not be returned to CI. The Subject's ROI can be used in any administrative due process or disciplinary meeting or hearing. Certain information may be redacted to protect confidential information.

**NOTE: When completed Reports of Investigation are provided to department heads or supervisors, they will not be copied or reproduced in any form, nor will the original ROI be released to the subject employee. *ROIs will not be placed in an individual's City personnel file. ROIs will be returned to CI for filing.***

### **3.C11A SUBJECT'S REPORT OF INVESTIGATION REQUIREMENT**

When an ROI results in a SUBSTANTIATED finding, the department head or supervisor will be provided with the Report of Investigation (blue cover) **and** the Subject's Report of Investigation (green cover). The purpose of the Subject's Report of Investigation is to provide the subject(s) with a report of the facts discovered during the investigation. This will be the document introduced in any post-investigation disciplinary hearing/action.

Note: An Executive Summary may be completed for Legal cases where information is condensed to facts relevant to the case or cases where the charge is changed. (From Unsubstantiated to Substantiated or reverse)

### **6.C12 RESPONDING TO COMPLAINANTS**

When appropriate, the complainant will receive a letter/e-mail from the CI Director outlining the general completion of the case.



Responses to complainants should address all allegations as framed during the complaint and analysis, but will not contain case specifics. The response will address the case completion without information of the case.

### **SECTION 3D – PROCESSING SUPERVISORY REPRISAL, ABUSE OF AUTHORITY, AND RESTRICTION COMPLAINTS**

Reprisal complaints usually come from employees who believe their supervisor has taken, directed, or threatened some negative personnel action against them which they feel is unjust.

Typically this happens after an employee makes a complaint to a supervisor, the City Investigations Office, or any senior official regarding wrongdoing or points out possible fraud, waste, or abuse in City government.

The following outlines City policy for processing reprisal complaints:

City Investigations **must** investigate complaints containing allegations of reprisal made against supervisors or other employees.

#### **3.D1 CONDUCTING A REPRISAL COMPLAINT ANALYSIS**

The IO receiving the complaint must expeditiously conduct a thorough reprisal complaint analysis to determine whether an investigation is warranted.

Before conducting a reprisal complaint analysis, CI must find out if the complaint or allegation which constituted the *protected communication* was properly addressed.

If the complaints/allegations were properly addressed, CI will obtain a copy of the applicable documents from the appropriate office/department to assist them during complaint analysis.

If the allegations were not properly addressed, then CI will refer the matter to the appropriate office/department for action or conduct a complaint analysis on the allegations to determine the need for further CI action.

Reprisal complaint analysis will be conducted following the **acid test** procedures specified below.

The **acid test** is a four-part process which aids the IO reviewing a supervisory official's conduct in order to evaluate if reprisal occurred. It is an integral part of the reprisal complaint analysis, and all four questions of the acid test must be completed and included in the reprisal complaint analysis.

If the reprisal complaint analysis determines that a reprisal investigation **is** warranted, then the investigation should be promptly conducted.

If the complaint does not meet the test for reprisal, but the complaint analysis still identifies the need for a CI investigation, then the allegations will be treated as a personal complaint and processed accordingly.

The ROI must identify all *protected communications*, all personnel actions alleged to be acts of reprisal taken after the protected communication was made, and all responsible management officials.

The ROI must contain a thorough acid test for reprisal with all four questions answered for **each** allegation of reprisal. (Refer to Paragraph 3D3.)

The ROI must contain a chronology of events beginning at least with the complainant's **initial** *protected communication* and including adverse personnel action taken against the employee as a result of the *protected communication*.

The completed ROI must contain a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries of interviews conducted.

### **3.D2 PROTECTED COMMUNICATION**

A *protected communication* is any complaint regarding wrong-doing, violations of rules, law, or policy, accusations of fraud, waste, and abuse, or other misconduct, made by an employee to a senior supervisor, department head, or any other senior/government official.

### **3.D3 ACID TEST FOR REPRISAL**

The "acid test" is a four-part process, which aids the IO in determining if reprisal occurred and will be incorporated into Section III of the ROI. The questions for the acid test are:

1. Did the employee make a “protected communication” (i.e., complaint or allegation of wrongdoing to a supervisor or senior official)?  
*Answer Yes or No. Provide the details including the dates of the protected communication, to whom the protected communication was made; and what the protected communication concerned.*
  
2. Was an unfavorable personnel action taken or threatened; or was a favorable action withheld or threatened to be withheld following the protected communication?  
*Answer Yes or No. Provide an explanation describing what was the unfavorable or withheld favorable personnel action, or threat thereof, taken or withheld. Detail which official(s) were responsible for which action.*
  
3. Did the official(s) responsible for taking, withholding, or threatening the personnel action *know* about the protected communication?  
*Answer Yes or No. State the supporting facts, evidence and testimony. It is important to state when each official responsible for the adverse action became knowledgeable. Give specific dates whenever possible. If an exact date is not known, the phrase “on or about” may be used when it fits the time frame in question. If the responsible official did not know about the protected communication, then there was no reprisal.*
  
4. Does the preponderance of evidence gathered establish that the unfavorable personnel action would have been taken anyway if the protected communication had *not* been made?  
*Answer Yes or No. Be specific and explain the logic and rationale of the decision. Highlight any reason there is a genuine connection between the adverse personnel action and the protected communication. Highlight any reason there is not a connection. When answering question #4, the following related questions regarding the personnel action must be addressed in the analysis as separate subheadings:*
  - (1) **Reasons** stated by the responsible official taking, withholding, or threatening the action against the employee
  - (2) **Reasonableness** of the action taken, withheld, or threatened considering the employee’s performance and conduct
  - (3) **Consistency** of the actions of responsible management officials with past practice
  - (4) **Motive** of the responsible official for deciding, taking, or withholding the personnel action

### **3.D3A ACID TEST FOR SOCIAL MEDIA**

Key analysis as to whether the social media posting is either policy violation or a **First Amendment freedom of speech is:**

- Is the posting pursuant to the employee's ordinary job duties?
- Is the employee posting on a matter of public concern?
- Is the employee identified as a City worker?

### **3.D4 ABUSE OF AUTHORITY**

If an allegation does not meet the criteria of reprisal, there still may be "abuse of authority" by the responsible official who has taken a perceived unfavorable personnel action.

Definition: *Abuse of Authority* is an *arbitrary and capricious* exercise of power by someone (a supervisor, manager, senior official, or City employee) that *adversely* affects any person (employee or citizen), or results in personal gain or advantage to the supervisor, manager, senior official, or City employee.

The IO will answer the following questions to help determine if abuse of authority has occurred:

1. Did the responsible management (supervisory) official (RMO's) actions either:
  - a. Adversely affect any person? (i.e., demotion, extra duty, etc.), or
  - b. Result in personal gain or advantage to the RMO? (Promotion, award, etc.)

*If the answers to questions (a) and (b) are "no" then it is not necessary to consider question #2. If the answer to either (a) or (b) is "yes" then consider questions #2 and #3.*
2. Did the RMO act within the authority granted under applicable regulations, law, policy, etc.?
3. Was the action arbitrary and capricious? Consider the following in your analysis:

*What were the **reasons** stated by the responsible official for taking, withholding, or threatening action?*

*What was the **reasonableness** of the action(s) taken, withheld, or threatened considering the employee's performance and conduct?*

*Were the actions taken by the RMO **consistent** with past practice?*

*What was the **motive** of the RMO for deciding, taking, or withholding the personnel action?*

For accusations of abuse of authority, the IO will include the above analysis in Section III of the ROI.

### **3.D4A ABUSE OF POSITION**

It is City policy that employees will not use their position to obtain access to records, information, or equipment for personal or non-City business purposes.

### **3.D5 RESTRICTION COMPLAINTS**

It is the policy of the City of Montgomery that any employee has the right to contact the Office of City Investigations at any time or complain or point out wrongdoing to any senior City official at any time (i.e., make a protected communication). However, the employee should first consider (though it is not mandatory) to try and handle complaints at the lowest supervisory level or through normal personnel channels.

Restriction occurs when an employee is *prevented* from contacting CI, a supervisor, or other senior official in order to complain or make any allegation of wrongdoing or is prevented from contacting a more senior supervisor or senior official to make a protected communication. This denies an employee use of the City's CI system. When investigating a complaint of restriction the IO must consider the following:

1. Did a supervisor, manager, or senior official attempt to limit the employee's access to CI or other supervisors?
2. What was the intent of the supervisor, manager, or senior leader in doing so?  
Consider:

- **Reasons** stated by the supervisor, manager, or senior official for restricting or taking actions that created barriers to contacting CI or making a protected communication
  - **Reasonableness** of the actions
  - **Motive** for the actions
3. Would a reasonable person, under similar circumstances, believe he/she was actually restricted from making a protected communication or contact with CI?

The IO will include the above analysis in Section III of the ROI.

NOTE: Restriction may be communicated by a variety of means (verbal, oral, written policy, orders, counseling, or public statement, etc.).

### **3.D6 WORKPLACE AND HARASSMENT AND SEXUAL HARASSMENT COMPLAINTS**

#### **REPORTING AND INVESTIGATION OF CHARGES OF HARASSMENT, RETALIATION, OR DISCRIMINATION**

Any employee who believes that he or she is being harassed should report it to the direct supervisor. The supervisor will initiate the investigation. If the supervisor is the harasser or avoiding the issue, report to the next level supervisor or immediately in writing or verbally to the City County Personnel Board and/or the Department of City Investigations. If the complaint is made verbally, the complainant should make and maintain a written account detailing the date of the incident(s), what was said or done, and the names of all witnesses.

Harassment in any form can create a hostile, offensive, and/or an intolerable work environment. Workplace harassment can occur based on (but not limited to) sex, gender identity, race, religion, national origin, color, disability, or some other protected status.

All complaints of harassment will be taken seriously and will require some level of investigation. The CI Director will determine the type of investigation required.

In some cases, harassment complaints will require that an investigation be designated as a "Priority 1" to begin without any delay. The CI Director will direct this action as needed.

As a minimum, the investigation and /or investigation planning should answer the following questions when interviewing the complainant:

1. Has the complainant spoken with anyone in the supervisory chain of command about the alleged harassment?
2. How does the complainant describe the alleged harassment?
3. Does the alleged harassment disrupt, interfere with, or create a hostile or offensive working environment for the complainant?
4. Is the alleged harassment based on race, color, gender, religion, sex, sexual preference, nationality, age, or any other “protected” status?
5. Did the alleged harassment include unwelcome or unwanted sexual advances, request for sexual favors, or include verbal or physical contact of a sexual nature?
6. Does the alleged harassment fit any of the “Prohibited Acts of Harassment” listed in the City of Montgomery Employee Handbook?
7. Due to the potential sensitivity of a sexual harassment complainant, who should conduct the interview? Would the complainant be more comfortable talking to someone of the same gender?
8. Does the interview need to be completed in an area that will make the complainant as comfortable as possible?
9. Can the complainant provide names of potential witnesses to the alleged harassment?
10. Can the complainant provide any written documentation or other proof (i.e., pictures, cell phone, or social media) of the alleged harassment?

As a minimum, the investigator should consider the following when interviewing the employee (subject) accused of harassment:

1. Does the subject understand the specific nature of the complaint?
2. If the subject denies the harassment complaint, what information can be provided to refute the accusation?
3. Can the subject provide any witnesses to refute the accusation?
4. If the subject is a supervisor, has there been any action against the complainant that could potentially be viewed as retaliation or abuse of authority?

## **HARASSMENT**

Federal laws prohibit harassment based on a person’s protected status:

- Race [Title VII of the Civil Rights Act (1964)]

- Color [Title VII of the Civil Rights Act (1964)]
- Sex [Title VII of the Civil Rights Act (1964)]
- Sexual Harassment - Pregnancy - LGBTQ including sexual orientation & gender identity (June 2020)
- National Origin [Title VII of the Civil Rights Act (1964)]
- Religion [Title VII of the Civil Rights Act (1964)]
- Age (40 & up) [The Age Discrimination in Employment Act (1967)]
- Pregnancy [Pregnancy Discrimination Act (1978)]
- Disability [The Americans with Disabilities Act (ADA) (1990)]
- Veteran Status [The Uniformed Services Employment & Reemployment Rights Act (1994)]

## SEXUAL HARASSMENT

It is a form of sex discrimination that contains ALL three elements:

- (1.) It is of a sexual nature.
- (2.) It is unwelcome.
- (3.) It has detrimental consequences to work performance and/or work environment.

Sexual harassment can be any of the following:

- Unwelcome sexual advances
- Requests for sexual favors
- Other verbal or physical conduct of a sexual nature

Points to remember:

- The harasser can be a man or a woman.
- The victim does NOT have to be of the opposite sex.
- The harassment does NOT have to be motivated by romantic/sexual desire.

TYPES OF HARASSMENT:

- Quid Pro Quo / Tangible Job Benefit
- Hostile Work Environment



Quid Pro Quo- Latin meaning: “This for That”

Quid Pro Quo occurs when submission to unwanted sexual advances is a condition of employment, either to gain some employment benefit or avoid some employment harm. The perpetrator is always a supervisor, owner, or boss. This is the most well-defined and least common form of sexual harassment.

**CAUTION:** Relationships that begin as consensual may end up being perceived as having been coerced. This is especially true in relationships between supervisors & subordinates.

### HOSTILE WORK ENVIRONMENT

Hostile work environment occurs when harassment is so pervasive and/or severe that it is difficult to bear and unreasonably interferes with the work. The perpetrator can be a supervisor, co-workers, vendors, customers, etc.

#### Examples:

- Repeated & gratuitous derogatory remarks about individuals in the office
- Repeated undesired physical contact, such as brushing up against someone
- Repeated unwelcome comments, questions, etc. about a protected status

### HARASSING BEHAVIORS

Harassing behaviors can be **physical, verbal, and nonverbal/visual**.

#### PHYSICAL CONDUCT

- Touching of the body or clothing
- Holding, grabbing, pushing, shoving, pinching, fondling, massaging, patting, hugging, kissing
- “Accidental” bumping against
- Physical assault
- Physical intimidation
- Coerced sexual intercourse, attempted rape, rape
- Must be unwanted

- Remember, just because someone laughs does not mean it is okay, or they found it funny.
- Slurs or innuendoes
- Threats
- Jokes, teases, & derogatory references about protected status
- Offensive language
- Mocking accents
- Persistent unwelcome flirting
- Comments, questions, descriptions, and/or commentary in reference to protected status
- Circulating or displaying offensive materials including posters, calendars, cartoons, e-mails, etc.
- Staring, leering, or ogling
- Leaning over someone at a desk
- Lewd gestures or motions
- Stalking

### **SECTION 3E – FORMAL FEEDBACK PROCESS**

Following an investigation, feedback through the supervisory chain-of-command is critical. When an investigation is completed, the CI Director will inform department heads and supervisors of the results just in case immediate action is required. This feedback may be critical for timely disciplinary action.

When feedback on investigation results is provided, the information must remain confidential between the supervisor and CI. If the case will result in legal action, the CI Director will consult and coordinate with the City Legal Department. The CI Director in consultation with the City Legal Department will approve what specific information contained in the ROI will be released. *Do not release the original ROI to the subject.* It must be retained by the supervisor and returned to City Investigations.

For Legal Reports of Investigation, only the City Legal Department will approve release of any information contained in the report.

Citizens who lodge complaints involving the City should receive a letter that explains (at least in general terms) an investigation was completed as the result of their complaint.

### **3.E1 REPORT TO THE MAYOR**

CI will also provide a monthly report to the Mayor summarizing all CI cases and investigations. In addition, the CI Director will meet with the Mayor, Chief of Staff, City Attorney, and Senior Staff Attorney to discuss this report.

Feedback is critical at the Cabinet/director level. In addition, there shall be a Review Board meeting between the Mayor, City Attorney, and City Directors to discuss employee discipline following CI investigations. The review board will only meet at the request of the Mayor, as required.

The Review Board meeting would include a general discussion of CI cases. The discussion need not mention specific individuals by name but focus on the general facts of a case and the follow up action. Supervisors would discuss the action taken and why.

### **SECTION 3F – WEBSITE REQUIREMENT**

The Office of City Investigations will have a separate section on the homepage of the City's website titled CITY INVESTIGATIONS. It will include a fillable/downloadable CI Complaint Form, instructions for filing a complaint, and a directory of staff. It shall contain a description of the process for filing a complaint and what to expect once a complaint is filed with CI. A copy of the Claim Form and instructions to be filed with the City Clerk shall also be on the web page.

### **SECTION 3G – OFFSITE WORK**

Due to COVID requirements and infection rates within the office, City Investigators may be granted work from home status on a case by case requirement. Investigators may be granted from 1-10 days depending on contamination and spread in the office. The Director may setup individual investigators to rotate in and out of the office.

## Chapter 4

### Glossary of Key Terms

NOTE: Key Terms described in Chapter 4 of this directive are provided only for the limited purpose of establishing definitions applicable to City of Montgomery investigations. For additional terms and definitions, refer to the City of Montgomery Employee Handbook.

**Abuse** – Intentional wrongful or improper use of resources. Examples include misuse of supervisory position or authority that results in misuse of City equipment.

**Abuse of Authority** – An arbitrary or capricious exercise of power or authority over an employee or citizen. To qualify as arbitrary or capricious: (1) the action either adversely affected the rights of an employee or citizen, or resulted in the personal gain or advantage of the responsible management official (RMO); (2) the RMO did not act within the authority granted under applicable law, policy, or regulations; (3) the RMO's action was not based on relevant factors; or (4) the RMO's action was not rationally related to the relevant data and factors.

**Abuse of Position** – Obtaining access to records, information, or equipment for personal or non-City business purposes or for use in non-City business-related situations. Abuse of position occurs when an individual uses employment privileges with the City to obtain records, information, or use of equipment that would not be available to non-City employees.

**Acid Test** – A test the Investigating Officer uses to determine if reprisal or abuse of authority has occurred. (See Paragraph 3.D3 for instructions on the use of the Acid Test.)

**Administrative Actions** – Non-criminal proceedings or actions taken against an employee by a supervisor. This includes (but is not limited to) verbal counseling, written letters of counseling, admonishment, temporary suspension, and/or termination of employment.

**Adverse Information** – Information that constitutes: (1) a violation of criminal law; (2) an abuse of authority; (3) Fraud, waste and abuse, or mismanagement; (4) misconduct; (5) prohibited discrimination or sexual harassment; and/or (6) a matter

or action that may adversely reflect an individual's judgment or exercise of authority.

**Allegation** – A postulated assertion (assumed without proof) formed concerning an individual or detrimental condition. An allegation is a hypothetical statement containing four elements: (1) When (in what time frame did the behavior occur); (2) Who (the person identified); (3) What was improperly done (the specific behavior or conduct that was improper); and (4) In violation of what standard (law, policy, regulation, instruction, or procedure).

**Appointing Authority** – The individual holding the position who has the singular authority to appoint an individual to conduct an investigation. In the City of Montgomery, the appointing authority is the Mayor, who delegates authority to appoint investigating officers and conduct investigation to the Director, Office of City Investigations.

**Arbitrary** – Based on or subject to individual discretion or preference, or sometimes impulse.

**Assertion** – A declaration that is made emphatically, as if no supporting evidence were necessary.

**Authentication** – The process of having a document, such as correspondence, personal notes, electronic/computer records, etc., verified as genuine.

**Bullying** - Persistent or repetitive behavior that is insulting, disrespectful, abusive, or otherwise unwelcome or objectionable, either direct or indirect, whether verbal or nonverbal, physical or otherwise, conducted by one or more persons against another person or persons, at work or in the course of employment. Bullying can occur either inside or outside the workplace. Bullying can also take place via social media under circumstances that include discriminatory remarks, harassment, threats of violence, or similar inappropriate or unlawful conduct.

**Capricious** – Determined by chance, impulse, or whim rather than by necessity or reason.

**Case File** - A compilation of documents relevant to a complaint investigation that are gathered and prepared during the investigation process. (See Chapter 3 for proper case filing procedures.)

**Chain-of-Command** – For the purpose of this instruction, chain-of-command includes those exercising authority over an employee, including an employee’s supervisor and succession of supervisors above, through the department head and finally, the Mayor, City of Montgomery.

**Closure** – A case that results in a CI investigation will be considered closed after all required reviews and approval by the appointing authority (CI Director) are completed and the subject’s department head and/or supervisor has been notified of the results.

**Complainant** – Any person making a complaint against any City of Montgomery employee, process, organization, or operation.

**Complaint Analysis and Investigation Plan** – A process to determine the most effective resolution strategy to resolve and/or investigate the issues raised by the complainant’s assertion. It is mandatory for all complaints filed against the City. (See Paragraph 3.A8 the directions.)

**Complaint Clarification** – The process of reviewing a complaint to ensure the intent of the complaint is verified.

**Complaint Resolution Process** – All actions necessary to resolve a complaint from receipt to closure.

**Confidentiality** – The protection of individual privacy.

**Contact** – The act of receiving a complaint, verbal or written, from a complainant.

**Criminal Offense** – A violation of applicable state, federal, or local criminal law.

**Discovery Requests** – A request for information to be used by legal counsel in preparation for legal court proceedings such as trial.

**Dismiss** – A complaint is dismissed if the complaint analysis determines it is not appropriate for investigation because:

1. It discloses no recognizable wrong or violation of law, policy, procedure, or regulation.
2. It is a matter not appropriate for CI investigation and should be handled by some other administrative process.

3. It is not timely. The complaint has not been filed within 60 days of the alleged wrong, and there were no extraordinary circumstances justifying the delay.
4. The complainant refused to provide sufficient evidence to properly conduct a complaint analysis.
5. The investigation would not appreciably affect the outcome sought.
6. The allegations have already been handled/investigated/reviewed by another office, and the complainant provides no new evidence or information that justified further investigation.

**Evidence** – Information or data upon which a conclusion or judgment may be based. Evidence is information that tends to prove the existence of a fact.

**Fact** – Information or data that has actual existence or occurrence.

**Follow-up** – A case will be placed in follow-up status when awaiting results of supervisory corrective action.

**Fraud** – Any intentional deception designed to unlawfully deprive the City of Montgomery of something of value, or to secure from the City an individual benefit, privilege, allowance, or consideration to which the individual is not entitled. Such practices include, but are not limited to:

- The offer, payment, acceptance of bribes or gratuities, or evading or corrupting inspectors or other officials.
- Making false statements, submitting false claims, or using false weights and measures.
- Deceit, either by suppressing the truth or misrepresenting the material facts, or to deprive the City of Montgomery of something of value.
- Adulterating or substituting materials, falsifying records, books, or accounts.
- Conspiring to carry out any of the above actions.
- For purposes of this instruction the definition can include any theft or diversion of City of Montgomery resources for personal or commercial gain.

**Frivolous Allegation** - As used in this instruction, following a thorough complaint analysis, any allegation that fails to allege facts that, if true, would constitute a violation of standard, law, regulation, or policy.

**Gross Mismanagement** – Any management action or inaction that creates a substantial risk of significant adverse impact on the City’s ability to accomplish its mission. It goes beyond simple negligence or wrongdoing. There must be an element of blatancy.

**Gross Waste of Funds** - An expenditure that is significantly out of proportion to the benefit expected. It is more than a debatable expenditure.

**Harassment**- Actions in the workplace by any employee that result in an individual not being treated with courtesy, respect, consideration, and professionalism. Harassment may occur for *any* discriminatory reason, including but not limited to, race, gender, pregnancy, sex, sexual orientation, gender identity, marital status, national origin, disability, age, or religion.

**Hearsay** – Information from an individual attributed to another individual or third party.

**Impartiality** - A principle holding that a decision should be based on objective criteria rather than on the basis of bias, prejudice, or preferring the benefit to one person over another for improper reasons.

**Improper Conduct** – Conduct (acts or omissions) found to violate an identifiable directive, instruction, policy, regulation, law, or standard without regard to knowledge, motive or intent.

**Inappropriate Conduct** – Conduct or action that any reasonable person would consider likely to erode confidence in the integrity of the City of Montgomery, but does not violate an identifiable directive, instruction, policy, regulation, rule, or statute.

**Independence** – For the purpose of this instruction, remaining free from any actual or perceived bias or conflict of interest during an investigation.

**Insubordination** - The willful or intentional failure or refusal of an employee to carry out lawful and reasonable instructions, express or implied, of the employer. There are two types of insubordination:



- Minor insubordination- is the result of a failure by the employee to carry out lawful and reasonable instructions, and there is no overt, express, or verbal refusal.
- Major insubordination- is the result of a direct, overt refusal to carry out lawful and reasonable instructions.

Some examples of insubordination are as follows:

- Disobedience;
- Failure or refusal to carry out a lawful and reasonable instruction;
- Failure or refusal to submit to manager or supervisor as shown by demeanor or words;
- Disrespectful behavior towards manager or supervisor; and
- Failure or refusal to sign as received a written warning;

The above list is not all encompassing or all-inclusive.

**Interrogatories** – A formal list of written questions prepared by the IO for a witness to answer. Questions are revised and updated as facts are developed.

**Investigation** – A duly authorized, systematic, detailed examination to uncover facts or truth of a matter. For the purpose of this instruction, CI investigations are administrative in nature. They are fact finding rather than judicial proceedings. They are not criminal proceedings in which “proof beyond a reasonable doubt” is required. For CI investigations, the standard proof that applies is “proof by a preponderance of evidence.” Investigations require formal collection of evidence, taking sworn testimony from complainants, witnesses, subjects, and documentation of the findings of fact in a Report of Investigation. A CI investigation is an evidence-gathering exercise to substantiate or not substantiate an allegation.

**Investigating Officer (IO)** – An individual appointed by the Mayor or CI Director to conduct an investigation in accordance with this instruction. Once appointed in writing, the IO is the personal representative of the Mayor, City of Montgomery. The IO’s authority to investigate extends to all City departments and employees.

**Lawful Communication** – Any communication whether verbal or written or otherwise transmitted including complaints, witness statements, and testimony which is not otherwise unlawful. (See definition of unlawful communication.)

**Legal Review** – For the purpose of this instruction, a review of a Report of Investigation to ensure legal sufficiency before the appointing authority approves the report and its findings. (See Legal Sufficiency.)

**Legal Sufficiency** – For the purpose of this instruction, a review of the ROI by the City Legal Department to determine whether:

1. Each allegation has been addressed.
2. The alleged violation of City regulation, procedure, or policy has been properly stated and determined.
3. The IO reasonably applied the preponderance of the evidence standard in arriving at findings.
4. The analysis is supported by sufficient evidence and consistent with the findings of fact.
5. The investigation complies with all applicable legal and administrative requirements.
6. Any errors or irregularities exist, and if so, their legal effects, if any.

**Misconduct** – Conduct undertaken by a City employee with (1) the knowledge that the conduct violates a standard or willful disregard for the possibility; (2) the intention to harm another or willful disregard for that possibility; or (3) the purpose of personal profit, advantage, or gain.

**Ombudsman** – An official appointed to receive and investigate complaints made by individuals against other City of Montgomery officials or employees regarding abuses or capricious acts, investigates reported complaints, reports findings, and helps to achieve an equitable resolution of complaints.

**Personnel Action** – Any action taken on an employee of the City of Montgomery that affects or has the potential to affect that employee’s current position or career.

**Preponderance of Evidence** – The standard of proof for CI investigations. The preponderance of evidence means that it is more likely than not that events have occurred as alleged. After weighing all the evidence (documentation and witness statements), the IO may substantiate a finding when the greater weight or quality of the evidence points to a particular conclusion as more credible and probable than the reverse. The amount of evidence is something to consider, but lots of bad evidence will not outweigh a smaller amount of good evidence. Some additional things to consider when weighing the evidence are witness demeanor, opportunity for knowledge, bias, motive, intent, and the ability to recall and relate events.

**Prohibit** – To prevent from doing something, to forbid or restrict by force of authority.

**Proof Analysis Matrix** – A framework that helps the IO organize the case. Specifically, it provides a construct for identifying the evidence needed to prove or disprove an allegation. The proof of analysis matrix may provide a reference outline for the analysis section of the ROI.

**Protected Communication** - Any complaint regarding wrong-doing, violations of rules, law or policy, accusations of fraud, waste and abuse, or other misconduct, made by an employee to a senior supervisor, department head, or any other senior/government official.

**Protected Status** - Federal protected classes include: Race, color, religion or creed, sex, age, physical or mental disability, and veteran status.

**Quality Review** – A review by the CI Director of the Report of Investigation and other investigative documents that ensures completeness and compliance with this instruction and other directives for objectivity and legal sufficiency.

**Redact** – To remove non-releasable material (such as blacking out with a marker).

**Referral** – When a complaint is transferred to another organization or department because the CI Director determines it is not appropriate for a CI investigation.

**Report of Investigation (ROI)** – The final stand-alone document produced by the IO after an investigation of an allegation(s). It contains all the essential facts, documentation, portions of regulations, policy, etc., and witness interviews. It is written so the reader can arrive at the same determination as the IO without reference to information outside the report. The ROI is a subset of the case file. The ROI will have a Quality Review by the CI Director and a Legal Review by the City Legal Department before it is presented to the department head for action.

**Reprisal/Retaliation** – Threatening or taking an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action for making or preparing to make a protected communication. (See protected communication definition.)

**Responsible Management Official (RMO)** – Responsible management officials are: (1) official(s) who influenced or recommended to the deciding official that he/she withhold or threaten a management action; (2) official(s) who decided to take, withhold, or threaten the management/personnel action, (3) any other official(s) who approved, reviewed, or endorsed the management/personnel action.

**Restriction** – Preventing or attempting to prevent an employee from making a complaint of wrongdoing to the Office of City Investigations, senior supervisor, or senior government official.

**Self-Investigation** – Investigating or directing an investigation into allegations pertaining to wrongdoing by the Office of City Investigations by any investigator assigned to the Office of City Investigations. If necessary, the Mayor will appoint someone outside of CI to conduct the investigation in accordance with this directive.

**Senior Official** – For the purposes of this instruction includes City of Montgomery Cabinet heads, senior supervisors, the Mayor and senior administrative staff, State and Federal officials in positions of authority.

**Sexual Harassment** – (An example but not limited to): A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and/or other oral and physical conduct of a sexual nature.

**Standards** – A law, regulation, policy, procedure, operating instruction, or custom of service that establishes a criterion for measuring acceptability.

**Statement** – A written or oral declaration of events made to an IO by a witness, subject, or suspect. Statements will be recorded and/or transcribed in accordance with this instruction.

**Statutory Authority** – Authority to act derived from statute. For example, the Mayor's authority to conduct investigations is derived from Act 618.

**Subject** – An individual against whom allegations of a non-criminal wrongdoing have been made and whose conduct is the focus of an investigation.

**Subject's Report of Investigation** – The Report of Investigation, which may be redacted at the discretion of the City Legal Department, and provided to the **subject** of substantiated charges.

**Substantiated Finding** - A finding that results when a preponderance of evidence supports the allegation of wrongdoing or violation of law, regulation, procedure, policy, or standards. The facts (from documentation and testimony) indicate the complainant was wronged or the violation of standards occurred.

**Summarized Testimony** – A written summary of witness testimony prepared and certified by the IO. It normally includes only those items directly related to the matters under examination. Summarized testimony is normally included in Section III of the ROI as it relates to a particular allegation.

**Suspect** – An individual suspected of a criminal offense. Identify someone as a suspect when the facts and circumstances known at the time of the interview are sufficient to support a reasonable belief the person to be interviewed may have committed a crime. Before interviewing a suspect, coordinate with the City Legal Department.

**Systemic** – A trend or pattern that relates to, or is common to, an organization.

**Testimony** – A solemn declaration usually made orally by a witness in response to formal questioning. It may be recorded, summarized, and/or transcribed verbatim. Sworn testimony is obtained from a witness who has taken an oath or affirmation to tell the truth. Unsworn testimony is obtained from a witness who has not taken an oath or affirmation to tell the truth. Normally, only properly sworn witness testimony will be used.

**Third-Party Complainant** – An individual who makes a complaint on behalf of another individual against the City of Montgomery or a City employee.

**Thoroughness** – A clear and concise reflection of all pertinent issues and information relating to the investigation of facts. Reports of Investigation must not raise unanswered questions or leave matters open to question, debate, or misinterpretation.

**Timeliness** – Conducting investigation operations with due diligence within the timelines described in this instruction.

**Unlawful Communication** – Any communication, whether verbal, written, or otherwise transmitted, that constitutes misconduct or a violation of law or other criminal statutes. Such examples include (but are not limited to): knowingly making

false statements, unauthorized disclosure of private or confidential information, obscene statements, or threatening statements.

**Unlawful Discrimination** – Discrimination on the basis of color, natural origin, race, religion, gender, disability, or age that is not authorized by law or regulation.

**Unsubstantiated Finding** – An “unsubstantiated” finding results when a preponderance of the evidence supports the conclusion that the alleged wrongdoing did not occur, or the facts indicate that no violation occurred. In addition, if there are insufficient facts to support a preponderance of evidence, the result will be an unsubstantiated finding.

**Waste** – The extravagant, careless, or needless expenditure of City funds or the consumption of City property or resources that results from deficient practices, system controls, or decisions.

**Witness** – Any individual who is interviewed or testifies during the course of a CI investigation.

**Workplace Harassment** – A form of unlawful discrimination directed toward a victim because of some protected status.