

# Austin Police Department

## Policy Manual

### *Administrative Investigations*

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investigation unless new information is received that indicates a more serious policy violation may have occurred. OFCA's should be completed within 20 days of the date the investigation is assigned to the chain-of-command. If an OFCA is invoked, the **10 business days** time frame for the administration of discipline does not apply.

#### **902.6.5 INVESTIGATIONS HANDLED THROUGH MEDIATION**

As an alternative to the normal IA process utilized in investigating complaints, the complainant and involved officer(s) may be invited to voluntarily participate in mediation. Mediation shall be an option discussed by the Office of the Police Monitor (OPM) intake staff after the external complaint affidavit has been submitted by the complainant. Complaints recommended for mediation will be noted on the OPM Interoffice Delivery Sheet. The OPM Interoffice Delivery Sheet and the original external complaint affidavit will be delivered to IA by OPM staff. Once mediation has occurred, the matter cannot be returned to the Department to be handled as a disciplinary matter unless the officer fails to complete the mediation session. Complaints resolved via mediation will not be counted as an incident in the Guidance Advisory Program.

- (a) The OPM intake staff shall not offer mediation to the complainant at the conclusion of the external complaint affidavit intake or as a complaint resolution option. Approval from the chain of command and willingness on the part of the officer to mediate a complaint shall be obtained prior to offering mediation to the complainant. To do otherwise may yield an unintended consequence of mistrust or dissatisfaction on the part of the complainant.
- (b) Complaints shall be reviewed by the IA lieutenant or commander within two (2) business days of receipt to determine whether they would be appropriate for mediation. Only Class B external complaints that involve less serious violations of Department policies and procedures may be eligible for mediation. Examples may include, but are not necessarily limited to:
  1. Allegations of profanity, belittling or rudeness.
  2. Allegations of inadequate police service.
- (c) If mediation is deemed appropriate for the allegation, the IA Lieutenant shall review the officer's complaint history and confer with the officer's chain of command to determine if the officer meets the qualifications for the mediation process. The chain of command shall report back to the IA lieutenant within five (5) calendar days indicating whether the officer has accepted or declined mediation as a complaint resolution. The option to utilize mediation may be withdrawn by the Chief or designee if withdrawal is deemed to be in the best interest of the Department.
  1. Officers will be eligible to choose mediation as an option to resolve complaints of a substantially similar nature no more than once every 6 months or twice per calendar year.
  2. IA will consult with the officer's chain of command to determine if subsequent complaints are of a substantially similar nature to previous complaints.
- (d) The officer's chain of command must obtain and review any audio/video related to the officer/complainant interaction. If the parties agree to mediate the complaint, the audio/video will be submitted to IA, copied to a designated flash drive or other portable media and supplied to the Dispute Resolution Center for the mediation session.
- (e) If the allegations are appropriate and the officer meets the qualifications for mediation, the offer to mediate shall be extended to the officer. If the officer agrees to mediate, the OPM shall extend the offer to mediate to the complainant.

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## Policy Manual

### *Administrative Investigations*

---

1. If either the complainant or the officer declines to participate in mediation, the OPM Mediation Coordinator will notify the IA lieutenant. IA will utilize its usual investigative process to handle the complaint and notify both parties that mediation will not occur.
2. If the officer and the complainant accept the offer to mediate, the OPM Mediation Coordinator will notify the Dispute Resolution Center of the referral via facsimile. The OPM Mediation Coordinator will furnish a summary of the incident and allegations to the Dispute Resolution Center as background information about the dispute. The assigned mediator may request additional information, if necessary, while contacting the complainant and the officer to schedule the session.
  - (f) A neutral third party mediator from the Dispute Resolution Center will contact the complainant and the officer to complete an intake/assessment, answer questions specific to mediation and schedule a date/time for the mediation session. Mediations will be scheduled on the earliest possible date; generally within thirty (30) days from the date of receipt of the formal complaint affidavit, if possible.
  - (g) A formal confirmation letter stating the date, time and location of the mediation will be sent to the officer and the complainant by the Dispute Resolution Center. A mediation brochure will also be provided to both parties prior to the mediation session. A mediation session will be scheduled for a two (2) hour time slot.
  - (h) Officers must schedule mediation sessions during their normal duty hours if those hours coincide with the normal business hours set forth by the Dispute Resolution Center. Officers working outside of the normal business hours set forth by the Dispute Resolution Center shall submit an overtime request form to the IA lieutenant.
  - (i) An officer attending a mediation session is considered to be on-duty, shall behave in a professional manner during the session, and is bound by policy. The officer is expected to fully participate in the mediation session. The officer shall wear a uniform or clothing suitable for court, as outlined in policy. Officers will not be prohibited from carrying their duty weapon while participating in a mediation session, but must comply with department policy regarding weapons.
  - (j) Mediation sessions are confidential. Unless all parties agree, only complainants, officers, and the mediators will be allowed into the session. A qualified, neutral interpreter will also be present if the complainant or a third party mediator deems such action necessary. All parties will be required to sign a Dispute Resolution Center Agreement to Mediate Waiver and Consent form. Once the form is signed by both parties and the mediation session has commenced, there is no provision for a complaint to be returned to IAD for investigation if the complainant is dissatisfied with the mediation process or the outcome of the mediation session. The mediation session will not result in a written agreement between the parties.
  - (k) At the conclusion of a mediation session, the mediator will provide the OPM Mediation Coordinator a written response stating whether both parties appeared and whether the session resulted in a completed mediation. This written response will be submitted to the OPM Mediation Coordinator and entered into ICMS. The written documentation will be maintained by IA. Although the mediation session is confidential, the nature of the complaint and the officer's identifying information shall be recorded in the ICMS database as a 'mediated' complaint. Mediated complaints will NOT be included as an incident in the Guidance Advisory Program (GAP).
  - (l) The Dispute Resolution Center will provide each party with a satisfaction survey at the conclusion of the mediation session. The complainant and the officer will complete the survey prior to leaving the Dispute Resolution Center. The survey will be submitted to

# Austin Police Department

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---

the OPM Mediation Coordinator and entered into ICMS. The written documentation will be maintained by IA.

#### **902.6.6 MEDIATION SCHEDULING CONFLICTS**

- (a) If the officer or complainant is going to be late for the scheduled mediation, they should contact the Dispute Resolution Center to inform them what time they will arrive:
1. If the officer or complainant will be delayed **less** than 20 minutes, the session shall commence upon the party's arrival.
  2. If the officer or complainant will be delayed **more** than 20 minutes, the Dispute Resolution Center shall consult with the other party to determine whether the delay is acceptable or whether that party would prefer to reschedule.
- (b) If the officer or complainant is unable to attend the mediation due to an unforeseen emergency, they should make every effort to immediately notify the Dispute Resolution Center to have the session rescheduled. The officer shall also contact the IA lieutenant regarding any cancellation and/or rescheduling. If the officer or complainant fails to appear and does not call the mediator, the mediation session shall be canceled for that day and the mediator will notify the OPM Mediation Coordinator and IA.
1. The OPM Mediation Coordinator shall attempt to make contact with the complainant to determine if there was a legitimate reason for the complainant's failure to attend the mediation session. If it is determined by the OPM Mediation Coordinator that a reasonable explanation did exist, the mediation session shall be rescheduled. If the OPM Mediation Coordinator determines the complainant did not have a reasonable explanation for missing the mediation session, the complaint shall be closed as a contact by IA.
  2. The IA lieutenant shall contact the officer to determine if there was a legitimate reason for the officer's failure to attend the mediation session. If it is determined that an explanation did exist, the mediation session shall be rescheduled. If IA determines the officer did not have a reasonable explanation for missing the mediation session, the option for the officer to engage in mediation may be withdrawn by IA and the allegation(s) made by the complainant will be fully investigated.
  3. Regardless of the circumstances, the officer and complainant may only reschedule a mediation session one time each.
  4. Failure to attend a rescheduled mediation session will result in the following action:
    - (a) If the officer fails to attend, the allegation will be fully investigated by IA.
    - (b) If the complainant fails to attend, the complaint shall be closed as a contact by IA.

#### **902.7 DISPOSITION PROCESS**

Regardless of which unit or command conducts an investigation, the involved employee's chain-of-command is responsible for recommending a disposition for each allegation based on the guidelines below. The final disposition for any allegation is ultimately determined by the Chief of Police or designee. Pursuant to a Department of Justice recommendation and a study of industry-wide best practices, IA does **not** recommend a disposition for any complaints.