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|  | POLICY |
| | Unit: Investigations |
| Number: | Title: Compelled Statements |
| Effective Date: | Supersedes: 3.4.4 (8/19/19) |

Compelled Statements

PUBLIC POLICY STATEMENT

Effective policies ensure compliance with the law, promote the use of best practices, foster integrity and independence in the performance of COPA activities, and provide transparency regarding the procedures and standards for the conduct of those activities.

COPA conducts administrative investigations into allegations of police misconduct, focusing on whether the conduct of Chicago Police Department members falls within the Department's rules and regulations. At the conclusion of an investigation, COPA may recommend that the Department take disciplinary action against its employee.

During the administrative investigation, COPA investigators interview Department members accused of misconduct, as well as any other Department members with information regarding the incident. To promote thorough investigations, Department members are required by law to cooperate with any administrative investigation undertaken by COPA pursuant to its ordinance (*see* Municipal Code of Chicago 2-78-140). Failure to cooperate may subject the Department member to discipline, up to and including discharge from the Department. Once compelled to answer COPA's questions, however, any statement furnished by the Department member, or any evidence derived from the statement, may not be used as evidence against the Department member in any future criminal proceeding if one should occur. This allows COPA to thoroughly investigate misconduct while preserving the Department member's Fifth Amendment interest in being free from compulsory self-incrimination.

COPA refers information and evidence gathered to law enforcement and/or prosecutorial agencies for review and consideration of criminal prosecution. COPA's policy must therefore provide clear instruction to staff to preserve the interests and integrity of both the administrative and criminal investigations. This includes protocols for identifying investigations that must be referred, liaising with law enforcement and/or prosecutorial agencies, and compartmentalizing information derived from certain compelled statements of Department members.

PURPOSE

The purpose of this policy is to:

- distinguish administrative investigations from criminal investigations;

- establish a procedure to identify Department member Compelled Statements, as well as evidence derived from Compelled Statements, and the investigative staff that has been exposed to the content of those Compelled Statements from investigative staff involved in the potential criminal investigation and prosecution;
- establish the process for establishing “Clean” and “Exposed” (sometimes colloquially referred to as “tainted” or dirty”) teams in the wake of a Compelled Statement; and
- establish a process that allows for the administrative investigation to continue while protecting the integrity of the potential criminal investigation and prosecution.

DEFINITIONS

| Term | Meaning |
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| Clean Investigator or Investigative Team | An investigator, or investigative team, that has not been exposed to the content of any compelled and self-incriminating statement as well as evidence derived from those compelled statements, provided by any Department member who is or may be subject to potential criminal prosecution. |
| Compelled Statement | In a COPA investigation a Department member can be compelled to give statements under threat of discipline or discharge. |
| Evidence Indicating Criminal Conduct | Objective, verifiable evidence indicating a crime has been committed necessitating a referral to a prosecuting agency. Such evidence may include audio or video recordings, documentary or physical evidence, and oral or written statements. |
| Exposed Investigator or Investigative Team | An investigator, or investigative team, that has been exposed to the content of any compelled and self-incriminating statement or evidence obtained through those compelled statements provided by any Department member who is or may be subject to criminal prosecution. |
| <i>Garrity v. New Jersey</i> , 385 U.S. 493 (1967) | Establishes that the Fifth Amendment protects employees from having compelled statements they made in administrative proceedings used against them in subsequent criminal proceedings. |
| <i>Garrity</i> Memorandum | A memorandum maintained and updated in the administrative investigative file to memorialize all <i>Garrity</i> -related decisions and activity along with the names of COPA personnel on the “Clean” and “Exposed” investigative teams. |

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| Major Case Incident | <p>Any of the following incidents:</p> <ul style="list-style-type: none"> • All firearm discharges by Department members. • Any death resulting from a motor vehicle accident or collision, if the Department member was engaged in law enforcement activity involving the individual or the individual's vehicle in the process of apprehension or attempt to apprehend. • Death or serious injury while in custody or detained. • Other weapons discharges, equipment usage or incidents resulting in serious injury or death. • Any incident, as determined by the Chief Administrator (or designee), requiring an in-person response by on-call personnel or members of COPA's Public Information Section. |
| Officer-Involved Death | <p>As defined at 50 ILCS 727/1-5, the term describes any death of an individual that results directly from an action or directly from an intentional omission, including unreasonable delay involving a person in custody or intentional failure to seek medical attention when the need for treatment is apparent, by a law enforcement officer while the officer is on duty, or otherwise acting within the scope of his or her employment, or while the officer is off duty, but performing activities that are within the scope of his or her law enforcement duties. "Officer-Involved Death" includes any death resulting from a motor vehicle accident, if the law enforcement officer was engaged in law enforcement activity involving the individual or the individual's vehicle in the process of apprehension or attempt to apprehend.</p> |

POLICIES

I. GARRITY CONSIDERATIONS

- A. During an investigation, COPA may take a compelled, potentially self-incriminating, statement from a member of the Chicago Police Department. In compliance with *Garrity vs. New Jersey*, 385 U.S. 493 (1967), neither the statement, nor any information derived from the statement, may be considered in any potential criminal case wherein the Department member who provided the statement is at risk of being charged with a violation of the law.
- B. COPA will engage in *Garrity* protocols at the request of a prosecutorial agency whenever a Department member whose actions are the subject of COPA's administrative investigation may also become the subject of a criminal prosecution.

II. GARRITY PROTOCOLS

- A. Officer-Involved Death Investigations:
 1. As a matter of course, COPA refers all Major Case Incidents that involve an Officer-Involved Death as defined by 50 ILCS 727 (the Police and Community Relations Improvement Act) to the Cook County State's Attorney's Office (CCSAO) for review and consideration of criminal prosecution.
 - a. Though COPA's administrative investigation must proceed in a timely manner irrespective of the existence of a criminal investigation or

prosecution, COPA investigative staff must be cognizant of the importance of maintaining *Garrity* protocols, when required, to preserve the integrity of any potential criminal prosecution.

- b. COPA may coordinate with a law enforcement and/or prosecutorial agency with respect to timing of a compelled interview of the Department member(s) that may be the subject of a criminal prosecution.
2. In an Officer-Involved Death investigation where the CCSAO has expressly requested *Garrity* protocols, COPA will establish a Clean Investigative Team and an Exposed Investigative Team.
- a. The establishment of the teams will be memorialized in the *Garrity* Memorandum. The *Garrity* Memorandum, along with any subsequent updates to the Memorandum, will be maintained in the administrative investigative file.
 - b. COPA staff typically designated to the Clean Investigative Team include the assigned investigator, the immediate supervisor, and the assigned Deputy Chief.
 - c. COPA staff typically designated to the Exposed Investigative Team include an investigator, an immediate supervisor, and a Deputy Chief, all separate from those assigned to the Clean Team.
 - i. Additional investigative staff, as well as members of COPA's Legal Section, the Chief of Investigative Operations, and the Chief Administrator may be added to the Exposed Investigative Team, as necessary.
 - d. COPA will provide information regarding the Clean and Exposed teams to the appropriate law enforcement and/or prosecutorial agency.
 - e. The Exposed Investigative Team will conduct the compelled interview of the Department member.
 - i. The Exposed Investigative Team will not disclose nor discuss the content of the investigation in any way with any COPA employee who is not also designated as an Exposed Investigator or on the Exposed Investigative Team.
 - ii. The Exposed Investigative Team will not confer with the Clean Investigative Team, nor will they confer with representatives from the law enforcement and/or prosecutorial agency considering criminal prosecution of the matter.
 - iii. The Exposed Investigative Team will conduct any follow up interviews and/or investigative steps that arise from information obtained from the Department member's Compelled Statement.

- iv. The Exposed Investigative Team will clearly label any files containing *Garrity* materials (i.e., notes, transcripts or recordings relating to a Department member's Compelled Statement, as well as the fruits thereof) and upload them to COPA's electronic case management system.
- f. The Clean Investigative Team will be available to the law enforcement and/or prosecutorial agency to discuss or assist with the criminal investigation of the matter, with no exposure to the Compelled Statement(s) nor the fruits thereof.
 - i. The Clean Investigative Team will not discuss the content of the investigation in any way with any COPA employee who is not also designated as a Clean Investigator or on the Clean Investigative Team.
- g. When possible, COPA will make every effort to keep as many Clean Investigators as possible, especially those with first-hand investigative knowledge stemming from the onset of the investigation (prior to the existence of the Compelled Statement). The purpose of this is to establish investigative staff that could, if needed, provide testimony relative to the investigation that has not been exposed to Compelled Statements.
- h. If, at any time a Clean Investigator becomes inadvertently exposed to the Compelled Statement (or its derivatives) of a Department member facing potential criminal prosecution, that investigator must immediately notify their immediate supervisor, as they can no longer be considered a member of the Clean Investigative Team. The immediate supervisor will ensure that the investigator's notification is memorialized in an updated *Garrity* Memorandum which will be maintained in the administrative investigative file.
- i. COPA will "collapse" Clean and Exposed Investigative Teams upon (1) adjudication of the criminal prosecution, or (2) receipt of a declination to prosecute by the prosecutorial agency. A declination to prosecute may be received formally through written correspondence, or informally through verbal communications with representatives of the prosecutorial agency.

B. Other Criminal Referrals:

- 1. For all other referrals for criminal consideration, made in the discretion of the Chief Administrator or Chief of Investigative Operations, or matters within COPA's jurisdiction in which Evidence Indicating Criminal Conduct by a Department member is found (*see* COPA Policies: Intake and Fact Gathering & Investigative Process), COPA will:
 - a. offer a briefing to the law enforcement and/or prosecutorial agency to which the referral is made; and
 - b. apprise the law enforcement and/or prosecutorial agency as to COPA's Investigative Plan for conducting compelled interviews of involved Department members.

2. COPA will not, as matter of course, establish separate Clean and an Exposed Investigative Teams in accordance with II(A)(2) above, unless otherwise directed by the Chief Administrator. COPA staff will, however, remain cognizant of *Garrity* implications because of the criminal referral. For example, investigative staff exposed to Department member Compelled Statements, as well as evidence derived from Compelled Statements will:
 - a. refrain from communicating with representatives of the law enforcement and/or prosecutorial agency to which the referral is made (*see* III below);
 - b. will not disclose nor discuss the content of the investigation in any way with any COPA employee who is not involved with the investigation; and
 - c. will clearly label any files containing *Garrity* materials (i.e., notes, transcripts or recordings relating to a Department member's Compelled Statement, as well as the fruits thereof) and upload them to COPA's electronic case management system.

III. REFERRAL LIAISON

- A. COPA will designate a Director of Investigations to serve as a Clean Investigator and liaison to the law enforcement and/or prosecutorial agency reviewing an incident within COPA's jurisdiction for potential criminal prosecution. The Director of Investigations will ensure that copies of materials from COPA's administrative investigative file, including copies of Compelled Statements, are made available to the law enforcement and/or prosecutorial agency (unless otherwise instructed).
- B. In the event the designated Director of Investigations becomes exposed to the Compelled Statement (or its derivatives) of a Department member facing potential criminal prosecution, the Chief of Investigative Operations may designate another member of COPA's investigative staff to act as Referral Liaison or oversee the responsibilities him/herself.

EXCEPTIONS

N/A

RELATED INFORMATION

| <u>Title</u> | <u>Link</u> |
|---|-------------------------------|
| COPA Interviews – Chicago Police Department Members | COPA Policy |
| Fact Gathering & Investigative Process | COPA Policy |
| Intake | COPA Policy |
| Investigative File Maintenance | COPA Policy |
| Timeliness Benchmarks | COPA Policy |
| <i>Garrity</i> Memorandum | COPA Template |

ADDITIONAL SEARCH OPTIONS

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