

	POLICY
	Unit: Investigations
Number:	Title: Fact Gathering & Investigative Process
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Fact Gathering & Investigative Process

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 investigators will conduct objective, comprehensive, and timely investigations of complaints, as well as police-involved incidents falling within its jurisdiction. COPA investigators strive to obtain all evidence relevant to an allegation or incident under investigation as expediently as possible and within the timelines specified by COPA’s ordinance and applicable policies.

PURPOSE

This policy is intended to outline expectations for the conduct of fair, thorough, and timely investigations after the initial processing and triage of complaints and Notifications described in COPA Policy (Intake).

DEFINITIONS

Term	Meaning
Canvass	A systematic approach to interviewing residents, business owners, and others who are in the immediate vicinity of an incident or allegation of potential misconduct and may have useful information.
COPA Intake Unit	COPA staff assigned to act as the agency’s first point of contact to facilitate the initial intake of complaints and Notifications via COPA’s various methods of information receipt, as well as make initial jurisdictional determinations, triage decisions, and conduct preliminary investigations.
COPA Investigative Squads	COPA staff assigned to carry forward investigative efforts after the initial intake of complaints and Notifications by COPA’s Intake Unit.

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.
Investigative Plan	An objective-oriented plan to carry out Investigative Actions, to address the complaint and/or Notification under investigation.
Notification	Alerts from the Department, made pursuant to Department directives, of Major Case Incidents, incidents of Department-member involved domestic violence, and other matters not involving death or serious injury, such as in-custody incidents involving attempted suicide, prisoner escape, and damage to lock-up facilities, even when no allegation of misconduct is made.
Major Case Incident	Any of the following incidents: <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.

POLICIES

I. PUBLIC TRUST AND PROFESSIONALISM

- A. All COPA staff will treat complainants and their representatives, witnesses, and Department members with the utmost respect, courtesy, and transparency while maintaining a calm, objective, and professional demeanor.
- B. Consistent with accessibility expectations detailed in COPA Policy (Intake), during all phases of the investigative process, COPA investigative staff will:
 1. Conduct objective and comprehensive investigations regardless of whether a complainant, victim, or witness is a member or perceived member of an identifiable group based upon, but not limited to, race, ethnicity, color, national origin, ancestry, religion, disability status, gender, gender identity, sexual orientation, marital status, parental status, military discharge status, financial status, or lawful source of income.
 2. Accommodate the presence or assistance of legal representation, translators, or individuals serving in a support capacity for all persons during the investigative process.
 3. Address the importance of trauma-informed interactions and approaches to the investigative process by utilizing internal (i.e., specially trained investigative staff)

and external (i.e., through partnerships with practitioners and professional organizations) resources, such as victim sensitive and forensic interviewing techniques for children, individuals with cognitive disabilities and other members of vulnerable populations.

II. FACT GATHERING & INVESTIGATIVE PLANNING

- A. Fact gathering begins upon complaint registration with COPA's Intake Unit. Pursuant to COPA Policy (Intake), the Intake Unit will conduct preliminary investigative work to make a jurisdictional decision and assign the investigation to COPA, the Department's Bureau of Internal Affairs, or refer the matter to another appropriate body.
- B. For investigations within COPA's jurisdiction, fact gathering continues upon assignment of an investigation to a COPA Investigative Squad. Upon assignment from the Intake Unit, the assigned COPA investigative team will:
 1. Pursuant to COPA Policy (Timeliness Benchmarks), review the file for completeness and ensure that all Investigative Actions are documented in COPA's electronic case management system.
 2. Pursuant to COPA Policy (Timeliness Benchmarks), prepare an Investigative Plan. Development of a thorough Investigative Plan at the outset of an investigation is critical to ensure that the investigative work is comprehensive and appropriate given the circumstances. An Investigative Plan will evolve as the investigation proceeds. Investigators must continually update Investigative Plans throughout the pendency of the investigation.
 - a. A sound Investigative Plan can facilitate the transfer of an investigation to other investigators and may also be utilized to facilitate briefings for supervisory staff and leadership.
- C. If a criminal investigation of a Department member's conduct has commenced, COPA will continue the administrative investigation, absent specific circumstances that would jeopardize the criminal investigation. In such circumstances, the determination to postpone the administrative investigation, along with the rationale for doing so, will be documented by COPA in writing and incorporated into the administrative investigative file.
 1. If COPA proceeds with an administrative investigation, COPA will be mindful of issues that may arise in taking compelled, potentially self-incriminating, statements from Department members (*see Garrity v. New Jersey*, 385 U.S. 493 (1967) and COPA Policy (Compelled Statements)).
 - a. Issues to be mindful of include, but are not limited to, whether COPA has engaged protocols designed to preserve a Department member's Fifth Amendment interest in being free from compulsory self-incrimination, limitations regarding communication with other COPA staff and prosecutorial and/or law enforcement agencies, and protocols for handling information derived from a compelled statement.
 2. A criminal investigation may be conducted by the Department's Bureau of Internal Affairs or other appropriate law enforcement (i.e., Federal Bureau of Investigation or

other entity with jurisdiction) or prosecutorial agency (i.e., the Cook County State's Attorney's Office, United States Attorney's Office or other entity with jurisdiction).

3. If at any time during the intake or investigation of a complaint determined to be within COPA's jurisdiction, COPA finds Evidence Indicating Criminal Conduct by a Department member, the Chief Administrator of COPA (or designee) will refer the investigation to the appropriate prosecuting agency.
- D. COPA will undertake best efforts to ensure that all complaints, including anonymous complaints, subject to applicable collective bargaining agreements, can be the subject of a misconduct investigation.
1. Best efforts include taking all reasonable steps to carry out the objectives of COPA's investigative process detailed in III below.

III. INVESTIGATIVE PROCESS

- A. In the course of conducting thorough and complete misconduct investigations, the assigned investigative team will:
1. Take all reasonable steps to discover and preserve any and all objective verifiable evidence relevant to the complaint or Notification through the identification, retention, review, and analysis of all available evidence, including, but not limited to: all time-sensitive evidence, audio and video evidence, physical evidence, arrest reports, photographic evidence, GPS records, computer data, and witness interviews.
 2. Gather evidence as quickly as possible in the early stages of an investigation to identify, track, request/order, and secure evidence or documents that will serve as the foundation for analyzing the complaint or incident in an objective manner.
 3. Take all reasonable steps to promptly identify, collect and consider all relevant circumstantial, direct and physical evidence, including officer-recorded audio/video taken with body-worn cameras or other recording devices.
 4. Take all reasonable steps to locate and interview all witnesses as soon as feasible, including non-Department member witnesses, and attempt to interview any complainant or witness in-person at a time and place that is convenient and accessible for the complainant or witness, when feasible. *See also* accessibility expectations detailed in COPA Policy (Intake) and benchmarks for Investigative Actions detailed in COPA Policy (Timeliness Benchmarks).
 - a. Reasonable steps include, but are not limited to, database searches to confirm witness identifiers and contact information, in-person visits, phone outreach, mail, social media contact, or other reasonable methods. Such attempts will reasonably accommodate the complainant's disability status, language proficiency, and incarceration status.
 - b. Feasibility associated with conducting interviews of non-Department member witnesses may be dictated by availability of reliable witness identifiers and contact information and/or a witnesses' expressed lack of willingness to cooperate with COPA's investigation.

- c. When additional possible witnesses are identified but lack contact information, the assigned investigator should utilize all resources available, such as commercially and/or publicly available “people-finder” databases and websites, to identify, locate, and secure an interview.
 - d. To locate individuals in unstable living circumstances, investigators may identify areas where the individual is known to frequent and canvass the area as needed and/or elicit assistance from other City agencies that provide services to those in unstable living circumstances, such as the Department of Family Support Services.
5. COPA investigators will confirm whether non-Department witnesses and individuals registering complaints are represented by an attorney relative to the matter that they are complaining about. If represented, investigative staff must communicate with that attorney going forward, which includes seeking permission to conduct a formal interview. *See also* COPA Policy (Intake) and (Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement).
 - a. If necessary, COPA investigative staff may communicate with the represented individual to inquire about representation and seek attorney contact information.
 - b. In the instance an individual contacts COPA to file a complaint and is represented (or may be represented), COPA investigative staff may communicate with the individual for purposes of gathering information sufficient to register the complaint.
6. Determine whether there are any other open administrative investigations involving the same involved member, and monitor or combine the investigation(s), as appropriate.
 - a. COPA investigators will search both the CLEAR and COLUMN CMS electronic case management systems for information related to a Department member, particularly when it is known that a Department member’s employment pre-dates COPA’s implementation of the CMS system.
7. Audio (and video, if practicable) record non-Department member interviews subject to the interviewee’s consent, or promptly (i.e., within the same day) prepare summaries of interviews when the interview is not recorded.
 - a. COPA may conduct interviews remotely by telephone or other web-based conferencing software.
 - b. For separate requirements regarding Department member interviews, *see* COPA Policy (COPA Interviews – Chicago Police Department Members).
8. Take all reasonable steps to identify the involved and witness Department member(s) if the complainant was unable do so.
9. Determine if there may have been additional misconduct beyond that initially alleged. If uncovered, COPA will take all reasonable steps to ensure that such identified misconduct is fully and fairly documented, classified, and investigated (i.e., assign

the investigation to COPA, the Department's Bureau of Internal Affairs, or refer the matter to another appropriate body).

10. Identify and take into account known relevant evidence gathered in parallel criminal investigation(s) or criminal or civil litigation, if available.
 11. Consider all original statements and any subsequent statements, including amended or modified statements, for purposes of determining whether a Department member willfully made a false statement about a fact material to the incident under investigation.
- B. The assigned investigative team will attempt to obtain all relevant information and documentation of the incident, to include:
1. Conducting searches of Departmental databases, such as CLEAR, Evidence.com, ShotSpotter, and applications within the Data Warehouse.
 2. Conducting searches of databases maintained by other City departments, such as the Office of Emergency Management and Communications, the Chicago Fire Department, and the Chicago Department of Transportation.
 - a. Pursuant to Municipal Code of Chicago 2-78-120(o) and 2-78-140, it is the duty every officer, employee, department, and agency of the City to cooperate with COPA, which extends to records maintained by other City departments.
 3. Requesting information from the Department, such as records reflecting training, personnel assignments, citizen contacts, equipment location, assignment, and usage, and other law enforcement or investigative activities, by contacting the unit where the information is maintained, the Bureau of Internal Affairs, or the Office of Legal Affairs.
 4. Requesting information maintained by other City agencies, including sister agencies, such as the Chicago Public Schools, Chicago Transit Authority, Chicago Housing Authority, and Chicago Park District.
 5. Canvassing:
 - a. Once the case is assigned, and when/if appropriate, the assigned investigator will conduct a Canvass of the scene (potentially in addition to any preliminary Canvass the Intake Unit conducted) to gain a personal perspective of the scene.
 - b. COPA investigators will not undertake a Canvass alone and will always be accompanied by at least one other investigator. If the assigned investigative team believes that the location is unsafe, the Canvass should be postponed.
 - c. Before going to the designated location, the assigned investigator should conduct background research to become familiar with the area (i.e., Google Maps or similar online resource) to determine exact locations, buildings, or apartments to be Canvassed.

- d. The assigned investigator should consider whether there will be any specific non-English language needs of the witnesses to be encountered in the area.
- e. As the assigned investigator conducts the Canvass of the location and relevant residences, businesses, and witnesses, she/he will keep a record of her/his actions and interactions.
- f. If necessary, the assigned investigator will coordinate with a COPA Evidence Specialist to ensure proper evidence recovery or involvement of the Department's Forensic Services personnel.

6. COPA Subpoenas:

- a. COPA investigators should first attempt to secure documents and/or witness statements by cooperation. However, pursuant to Municipal Code of Chicago 2-78-125, subpoenas may be secured for the attendance and testimony of witnesses and the production of relevant information.
- b. A COPA subpoena requires the approval of the General Counsel (or designee) who will review the subpoena for propriety and accuracy.
- c. A subpoena must have a return date of at least 7 days from service of the subpoena, but no more than 30 days. Extensions will be documented in writing, a copy of which will be stored in COPA's electronic case management system.
- d. Subpoenas may be served by personal service, but other means of service may be appropriate depending on the circumstances.
- e. If the assigned investigative team believes that a properly served COPA subpoena should be enforced through a Court order, the assigned investigative team will coordinate with members of COPA's Legal staff, upon concurrence of the General Counsel, Chief of Investigative Operations, and Chief Administrator, to refer the matter to the Department of Law for enforcement proceedings.

7. Video Evidence:

- a. COPA investigators may obtain video recordings from a variety of sources, including but not limited to: Department video recording equipment, such as in-car cameras and body-worn cameras, City of Chicago POD cameras, video recording equipment used by other City of Chicago entities, 3rd party surveillance equipment, or from recording devices in the possession of the complainant, victim, witness, or other 3rd parties.
- b. While Canvassing a scene, COPA investigators will identify and document any visible cameras at or near the scene.
- c. When securing 3rd party video (e.g., personal cell phone and private security cameras), COPA investigators will coordinate with COPA's Digital Forensic Analyst to ensure the integrity of the video material and to document the proper chain of custody.

8. Photographic Evidence:

- a. COPA investigators may use photographs as corroborative evidence to prove the existence of injuries or as contradictory evidence to document the lack of an alleged injury.
- b. COPA investigators may request a Department Evidence Technician, in coordination with COPA Digital Forensic Analysts or Evidence Specialists, to take the photographs of any victim who alleges injuries as soon as possible to document their presence or absence.

9. Electronically Stored Information (ESI) (e.g., Mobile Phones & Electronic Storage Devices):

- a. COPA investigators must obtain the legal authorization to examine ESI on phones, computers, and other electronic storage devices which will generally be obtained either through consent or pursuant to a search warrant.
 - i. When an investigation may result in the recovery of devices containing ESI, the assigned investigative team will coordinate with COPA's Legal staff to determine how to obtain the proper legal authorization to examine ESI.
- b. Upon becoming aware of its existence, COPA investigators will promptly (i.e., within the same day) seek or preserve ESI that is perishable (i.e., 3rd party video that may be retained only for a short period of time).
- c. COPA investigators will coordinate with COPA Digital Forensic Analysts to assist in obtaining or preserving ESI from computers, surveillance systems, mobile phones, and other devices.

10. Medical Evidence:

- a. COPA investigative staff will request medical records from the medical facility where a complainant, victim, or Department member received treatment. *See also* COPA Policy (Medical Evidence/HIPAA Policy) for additional information regarding legal requirements for handling medical records.
 - i. In cases involving serious injuries, the assigned investigator may also interview the treating physician or medical personnel to obtain as much detail as possible regarding the cause and extent of injuries.

11. Forensic Evidence:

- a. COPA investigative staff will gather all relevant physical evidence in a timely manner that preserves such evidence for analysis. If another agency gathers the evidence, such as the Department, COPA will liaise with that agency to ensure the timely processing of evidence. *See also* expectations for analysis and testing of physical and forensic evidence detailed in COPA Policy (Timeliness Benchmarks).

- b. Where expert opinions on the forensic analysis of evidence would be helpful for an investigation, COPA will seek to procure the services of appropriate subject matter experts.
- c. Collaboration with COPA Evidence Specialists:
 - i. COPA Evidence Specialist(s) are assigned to Major Case Incidents. For other cases, COPA investigators may request the assistance of an Evidence Specialist for investigative tasks involving the collection of physical evidence and the testing and evaluation of forensic evidence.
 - ii. For Major Case Incidents, the assigned investigative team will include a COPA Evidence Specialist in all investigative actions for which the assistance of Department Forensic Services has been requested.
- d. Ballistics, Firearms & Weapon-Related Evidence:
 - i. If an incident scene involves shell casings, bullet holes, and/or fired bullet fragments, the location of and orientation of such evidence can often be used to determine important facts such as the general location of the “shooter” and direction of the fire.
 - ii. If the investigation involves a Department member firearm discharge, the assigned investigative team will coordinate with the Department Forensic Services personnel and a COPA Evidence Specialist to ensure that gunshot residue testing is requested of the Department member.
 - iii. COPA coordinates forensic testing, including weapons testing, with the Illinois State Police Crime Lab. The assigned investigative team will make any requests for laboratory examination and analysis of physical evidence through a COPA Evidence Specialist.
- e. Biologic Evidence:
 - i. If a non-Department member’s weapon (e.g., bat, hammer, knife, or firearm) is recovered at an incident scene, the assigned investigative team must consider the potential for collection of DNA evidence on the weapon.
 - ii. If blood or other biologic evidence (e.g., sweat, semen) is present at the scene of the incident, the assigned investigative team must ensure that Department Forensic Services personnel take appropriate steps to properly secure, recover or sample, and preserve such evidence.
- f. Digital Forensic Evidence and Internet/Social Media Searches:
 - i. Social media (e.g., Facebook, Twitter, Snapchat) can serve as a productive source of evidence and intelligence information and should be considered as part of every Investigative Plan. As

appropriate, COPA investigators may discuss planned social media searches with their supervisors, COPA Legal staff, and/or a COPA Digital Forensic Analyst.

- ii. When conducting social media searches, COPA investigators will always document: the date and time of the search, the source of the information, the nature and scope of the search as well as the material obtained pursuant to the search in a report (e.g., screen captures). COPA investigators will utilize available social media preservation software for incorporation of relevant social media posting in the administrative investigative file.
- iii. Regarding investigations referred for criminal consideration to the Cook County State's Attorney's Office, the United States Attorney's Office, or other appropriate prosecuting agency, the assigned COPA investigative team may discuss and clear investigative strategies involving social media with the assigned prosecutor.

C. COPA will ensure that investigators do not:

1. ask leading questions that suggest legal justifications for Department member conduct during interviews of complainants and witnesses;
2. make statements that could discourage a witness from providing a full account of the specific allegations under investigation;
3. close an administrative investigation solely because of findings in related criminal proceedings;
4. consider findings in a related criminal investigation to solely determine whether a Department member engaged in misconduct;
5. disregard a witness's statement solely because the witness has some connection to either the complainant or the CPD member or because the witness or complainant has a criminal history; or
6. close an investigation solely because the complainant seeks to withdraw the complaint or is unavailable, unwilling, or unable to cooperate with an administrative investigation. If the complainant is unable or unwilling to provide information beyond the initial complaint, the administrative investigation will continue based on the available evidence in accordance with applicable law, collective bargaining agreements, and COPA Policy. *See also* COPA Policy (Intake) and (Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement).

IV. QUALITY ASSURANCE

- A. Department members are prohibited from interfering with an administrative investigation, including being untruthful in an investigation into misconduct or colluding with other individuals to undermine such an investigation, or intentionally withholding requested evidence or information from an investigator. If found to have interfered with an investigation, COPA may recommend disciplinary action and/or criminal prosecution based on the seriousness of the conduct.

1. The Chief Administrator will direct the Investigations Section and/or COPA's Policy, Research and Analysis Division to conduct periodic reviews of any applicable policies, such as Fact Gathering & Investigative Process and COPA Interviews – Chicago Police Department Members, to ensure the processes for prevention of Department member collusion and witness contamination are effectual as they pertain to COPA investigations.

EXCEPTIONS

N/A

RELATED INFORMATION

<u>Title</u>	<u>Link</u>
Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement	COPA Policy
Civil and Criminal Complaint Review	COPA Policy
CLEAR and COLUMN CMS Systems	COPA Policy
Compelled Statements	COPA Policy
COPA Interviews – Chicago Police Department Members	COPA Policy
Intake	COPA Policy
Investigative File Maintenance	COPA Policy
Major Incident Responses – Officer-Involved Shooting or Officer-Involved Death	COPA Policy
Medical Records/HIPAA Policy	COPA Policy
Sexual Misconduct Investigations	COPA Policy
Timeliness Benchmarks	COPA Policy
Training and Disciplinary Records	COPA Policy
Transparency Initiatives – Release of Video and Related Materials	COPA Policy
Civil Lawsuit Review	COPA Guidance
Processing Anonymous Complaints	COPA Guidance

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