

	POLICY
	Unit: Investigations
Number:	Title: Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement
Effective Date: 12/15/22	Supersedes: 3.1.4 (8/19/19)

Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement

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 conduct objective, comprehensive, and timely 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. When conducting investigations within its jurisdiction, COPA staff is obligated to carry out investigative activities in a manner consistent with all applicable rules and laws (*see* Municipal Code of Chicago 2-78-120(j)), which includes adherence to requirements detailed in collective bargaining agreements.

The collective bargaining agreements between the City of Chicago and the labor union representing sworn supervisory Chicago Police Department members require allegations of misconduct against Sergeants, Lieutenants, and Captains to be supported by a Sworn Affidavit. COPA strives to conduct investigations with the highest level of integrity and independence to make findings based on a thorough and objective analysis of the evidence. This includes taking all reasonable steps to obtain a Sworn Affidavit from a complainant, guardian, victim, or witness, identify and gather sufficient evidence to support a Sworn Affidavit Override Request, or to utilize an appropriate exception.

PURPOSE

To provide guidance on, and certain procedures for, the circumstances under which COPA must seek and acquire Sworn Affidavits, when and how to request a Sworn Affidavit Override, circumstances giving rise to an exception to the requirement for a Sworn Affidavit or Sworn Affidavit Override, and expectations surrounding tracking and memorializing efforts to obtain Sworn Affidavits or Sworn Affidavit Overrides.

DEFINITIONS

Term	Meaning
Abuse of Medical Roll	Abuse of medical roll includes any complaint alleging excessive or improper use of a medical program by a Chicago Police Department member.
Allegation of Criminal Conduct	Allegation of Criminal Conduct includes all complaints with an express or apparent alleged violation of Illinois state law, the criminal code of another state, or a criminal federal statute. A complaint considered to sufficiently allege criminal conduct should factually address the elements of the alleged criminal conduct. Without limitation, allegations of the following are considered allegations of criminal conduct: official misconduct, bribery, murder, crimes of dishonesty (i.e., theft, larceny, and robbery), arson, sexual misconduct (i.e., sexual assault without consent, sexual contact by force, and unwanted or gratuitous sexual contact such as groping or touching), deliberate indifference to a substantial harm to a person in custody (i.e., a known harm, knowledge of the harm, and lack of reasonable measures to abate the harm) and, failure to intervene (i.e., allegation of a constitutional violation, knowledge of the violation, opportunity to intervene, and failure to intervene).
Anonymous Complaint	A complaint received from an individual whose identity is unknown, and the complaint lacks sufficient information to identify the source or first and last name of the complainant. ¹
COLUMN CMS	The web-based investigative Case Management System (CMS) developed, managed and maintained by appropriate personnel from the City, the Department, and COPA.
Complaint Register (CR)	A designation indicating that a Log Number may proceed to a full disciplinary investigation of an allegation of misconduct against a sworn Department member.
Lack of Residency	Lack of residency includes any complaint alleging that a Chicago Police Department member is not an actual resident of the City of Chicago.
Log Number	A tracking number assigned to any incident brought to the attention of COPA by a complainant, the Department, or other source.
Objective Verifiable Evidence	Evidence that is verifiable by means other than a person's own statements.
Sworn Affidavit	A written or recorded statement confirmed by oath or affirmation certifying that the statement is true and correct under penalties provided by law.

¹ If COPA receives a complaint that includes other identifiers or contact information (i.e., a first or last name, email address, mailing address, phone number, or other similar identifiers or contact information) COPA may contact the complainant to confirm whether the complainant wishes to remain Anonymous (i.e., the complainant does not wish to confirm or disclose additional information regarding his or her identity in support of the complaint).

Sworn Affidavit Override	An action taken by the Chief Administrator of COPA or the Chief of the Department's Bureau of Internal Affairs deeming that there exists sufficient Objective Verifiable Evidence such that the continued administrative investigation of the allegations of misconduct is necessary and appropriate. Pursuant to applicable collective bargaining agreements, the Chief Administrator of COPA or the Chief of the Department's Bureau of Internal Affairs may seek a Sworn Affidavit Override to continue the investigation when attempts to contact a reporting party are unsuccessful or the reporting party declines to sign a Sworn Affidavit.
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POLICIES

I. AFFIDAVIT REQUIREMENT

A. Uniform Peace Officers' Disciplinary Act (*50 ILCS 725/3.8(b)*):

1. On February 22, 2021, the State of Illinois amended the Uniform Peace Officers' Disciplinary Act to allow for the filing of a complaint against a sworn Department member without a Sworn Affidavit or other legal documentation. The elimination of the Sworn Affidavit requirement applies to any collective bargaining agreements entered into by the City of Chicago and the police unions representing sworn Department members after July 1, 2021.
 - a. As of the effective date of this policy, Sworn Affidavit requirements apply only to Department members covered by the collective bargaining agreements between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156 (Sergeants, Lieutenants, and Captains) effective through June 30, 2022. **Therefore, the policy provisions that follow below apply only to Department members covered by these collective bargaining agreements.**
 - i. This policy will cease to be effective upon any subsequent agreements between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156 (Sergeants, Lieutenants, and Captains).
 - ii. Sworn Affidavit requirements do not apply to sworn Department members covered by the collective bargaining agreement between the City of Chicago and the Fraternal Order of Police Chicago Lodge No. 7 (i.e., all sworn Police Officers below the rank of Sergeant).
 - iii. Sworn Affidavit requirements do not apply to non-sworn Department members (e.g., Detention Aides or other civilian Department members) or other sworn Department members not otherwise covered by a collective bargaining agreement (e.g., the Superintendent, Deputy Superintendents, Deputy Chiefs, Chiefs, Commanders, etc.).

B. Sworn Affidavits:

1. In order to proceed with a CR investigation against a Sergeant, Lieutenant, or Captain, COPA must obtain a Sworn Affidavit from a non-Department member complainant which certifies that the allegations made in the complaint are true and correct.²
 - a. If the complainant did not actually witness the alleged conduct, they must certify that the facts alleged are true to the best of the complainant's knowledge and belief.
 - b. Multiple Sworn Affidavits are not required in support of complaints that include more than one allegation of misconduct (i.e., a complaint containing a variety of allegations, such as excessive force, coercion, and verbal abuse, relative to more than one Department member or more than one incident, may be supported by a single Sworn Affidavit).
 - c. A parent or guardian may sign a Sworn Affidavit in addition to or on behalf of a minor complainant, except in instances where the nature of the complaint makes doing so inappropriate or impractical (e.g., domestic incidents involving allegations of child abuse).
2. In the absence of a complaint supported by a Sworn Affidavit, and in accordance with COPA Policy (Intake), within 30 days of receipt of the complaint, COPA staff will make best efforts to obtain a Sworn Affidavit from the complainant, guardian, victim, or witness.
 - a. Best efforts include reasonable attempts to secure a Sworn Affidavit through in-person visits, phone calls, and other methods. Such attempts will reasonably accommodate the person's disability status, language proficiency, and incarceration status. *See also* COPA Policy (Intake) and COPA Guidance (Accessibility – People with Disabilities, Language Services, and Incarcerated Individuals).
3. If COPA is unable to obtain a Sworn Affidavit from a non-Department member with knowledge of the incident (i.e., a complainant, guardian, victim, or witness), and the preliminary investigation reveals Objective Verifiable Evidence suggesting that it is necessary and appropriate for the investigation to continue, the Chief Administrator may request a Sworn Affidavit Override from the Chief of the Bureau of Internal Affairs in order to continue investigating the incident.

C. Other Legal Documentation Constituting a Sworn Affidavit:

1. COPA may rely on the following court documents containing allegations of misconduct as satisfying the Sworn Affidavit requirement:
 - a. Sworn testimony (e.g., depositions or testimony made in court under oath).

² No Sworn Affidavit is required to proceed with a CR investigation against a Sergeant, Lieutenant, or Captain where the complainant or reporting party is Department member. *See* exception to the Sworn Affidavit requirement below at II(A)(3)(b).

- b. Verified Complaint filed in support of a lawsuit (i.e., where the plaintiff swears to under oath and signs the complaint indicating that allegations therein are true and correct).
 - c. Petitions for Order of Protection (i.e., a petition, signed and certified by the petitioner as true and correct, that gives the court information that is needed to decide whether the petitioner will be granted an Order of Protection).
 - d. Interrogatories (i.e., written questions that one party to a lawsuit sends to another, and the responding party submits written answers under oath).
2. The assigned investigative team will confirm with their assigned Deputy Chief and/or COPA Legal staff that any of the above court documents satisfy the Sworn Affidavit requirement before proceeding with the CR investigation against a Sergeant, Lieutenant, or Captain.

II. SWORN AFFIDAVIT OVERRIDES & EXCEPTIONS TO THE SWORN AFFIDAVIT REQUIREMENT

- A. COPA will issue Sworn Affidavit Override requests and exercise exceptions to the Sworn Affidavit requirement.

1. Sworn Affidavit Overrides:

- a. If by the 30th day from the date COPA received the complaint, or sooner, COPA has been unable to obtain a Sworn Affidavit in support of a complaint despite having made reasonable attempts to do so, the investigative team assigned to the case will assess the evidence collected in the investigation to determine whether COPA should continue the investigation and pursue a Sworn Affidavit Override from the Chief of the Bureau of Internal Affairs or, alternatively, whether the complaint should be closed with no finding for lack of a Sworn Affidavit.
 - i. No finding closure for lack of a Sworn Affidavit may result after COPA has made a good faith effort to obtain complainant cooperation, the complainant has affirmatively declined or, through investigative follow-up, COPA's efforts to locate and/or contact the complainant, guardian, victim, or witness to obtain additional information have been unsuccessful. Additionally, there exists a lack of other Objective Verifiable Evidence to proceed with an investigation without the complainant's participation. *See also* COPA Guidance (Review and Closing Authority – Investigations Involving No Findings).

2. Procedures and approvals for Sworn Affidavit Override requests:

- a. If the assigned investigative team determines that Objective Verifiable Evidence exists to support a Sworn Affidavit Override request, the assigned investigative team will prepare draft correspondence to the Chief of the Bureau of Internal Affairs, along with any supporting investigative file materials, detailing the evidence in support of the request.

- i. Objective Verifiable Evidence relevant to a complaint may be discovered 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.
 - ii. Objective Verifiable Evidence suggesting it is necessary and appropriate for the investigation to continue is sufficient to support a Sworn Affidavit Override request (i.e., a determination that the allegation is sustained based on the Objective Verifiable Evidence is not required in order to support a Sworn Affidavit Override request).
 - iii. The assigned investigative team may consult a Deputy Chief at any time if the assigned investigative team is uncertain about the sufficiency of evidence to support a Sworn Affidavit Override request or, alternatively, closure of the matter for lack of a Sworn Affidavit.
- b. A Deputy Chief will review the draft correspondence within 72-hours of receipt. If approved, the Deputy Chief will make available the correspondence and supporting investigative file materials, if any, to the Chief Administrator, who will review within 72-hours of receipt.
 - i. Upon request, the Deputy Chief will brief the Chief Administrator.
 - ii. Unless delegated due to vacation, medical emergency, or other unforeseen circumstances, all COPA Sworn Affidavit Override requests will bear the signature of the Chief Administrator.
- c. In reviewing the evidence gathered and determining whether to approve the Sworn Affidavit Override request, the Chief Administrator may consider the following factors, including but not limited to:
 - i. the nature and seriousness of the alleged misconduct;
 - ii. the credibility, reliability, and accuracy of the information in the complaint based on COPA's knowledge of the facts and circumstances; and
 - iii. the degree to which the alleged misconduct concerns the integrity of the officers involved or otherwise may undermine public confidence in the Department.
- d. If the reviewing Deputy Chief or Chief Administrator determine that further investigation is warranted prior to submission of the Sworn Affidavit Override request to the Bureau of Internal Affairs or, alternatively, the matter should be closed for lack of a Sworn Affidavit, the draft correspondence will be returned to the assigned investigative team with a notation entered by the Deputy Chief in CMS regarding declination, recommendation regarding additional investigation, and/or closure.

- e. A COPA Director of Investigations (or designee) will transmit all Sworn Affidavit Override requests to the Bureau of Internal Affairs and will be included on all communications between COPA and the Bureau of Internal Affairs related to Sworn Affidavit Override requests, will log and track the status of each request, and will ensure that all documentation related to the request is maintained.

3. Allegation Types Exempted from the Sworn Affidavit Requirement:

- a. Complaints against a Sergeant, Lieutenant, or Captain involving an Allegation of Criminal Conduct, Abuse of Medical Roll, or Lack of Residency may proceed as a CR without a Sworn Affidavit or Sworn Affidavit Override.
- b. No Sworn Affidavit against a Sergeant, Lieutenant, or Captain is required where the complainant or reporting party is a Department member.
- c. If, during an investigation of a complaint, the assigned investigative team determines by empirical observation (including without limitation, e.g., by viewing body worn camera or other video footage), that there exists Objective Verifiable Evidence to support allegations other than or in addition to those that are the subject of the underlying complaint, COPA, or a COPA member as an agent of COPA, may be named as complainant.
 - i. For procedures and approvals required to add COPA, or a COPA member as an agent of COPA, as complainant, *see* COPA Guidance (Misconduct Complaints Identified or Initiated by COPA).

III. ANONYMOUS COMPLAINTS

- A. In accordance with COPA Policy (Intake), COPA will conduct preliminary investigations of Anonymous Complaints (i.e., instances in which the complainant has not executed a Sworn Affidavit).
 - 1. In accordance with expectations detailed in II(A)(1), if through preliminary investigation the assigned investigative team identifies Objective Verifiable Evidence suggesting it is necessary and appropriate for the investigation of a Sergeant, Lieutenant, or Captain to continue, the assigned investigative team will seek a Sworn Affidavit Override pursuant to procedures listed in II(A)(2).
 - a. COPA may also forward Anonymous Complaints to the Illinois Law Enforcement Training Standards Board, empowered pursuant to the Police and Community Relations Improvement Act (50 ILCS 727/1-35), to issue a Sworn Affidavit Override provided ILETSB determines there is Objective Verifiable Evidence to support the allegation(s) of misconduct against a Sergeant, Lieutenant, or Captain.

IV. SWORN AFFIDAVIT OVERRIDE REQUESTS RECEIVED FROM THE BUREAU OF INTERNAL AFFAIRS

- A. The Chief Administrator of COPA will provide a Sworn Affidavit Override if there is Objective Verifiable Evidence suggesting it is necessary and appropriate for the Bureau of Internal Affairs' investigation to continue.
 - 1. Unless delegated due to vacation, medical emergency, or other unforeseen circumstances, all Bureau of Internal Affairs' Sworn Affidavit Overrides will bear the signature of the Chief Administrator.
- B. A COPA Director of Investigations (or designee) will receive all Sworn Affidavit Override requests from the Bureau of Internal Affairs and will be included on all communications between COPA and the Bureau of Internal Affairs related to Sworn Affidavit Override requests, will log and track the status of each request, and will ensure that all documentation related to the request is maintained.

EXCEPTIONS

COPA investigative staff may remotely conduct interviews of non-Department members that may otherwise be conducted in COPA's offices via telephone or other web-based audio/video conferencing software with the consent of the interviewee. Reasons for conducting interviews remotely may include, but are not limited to, interviewee preference or accessibility limitations due to disability, ability to travel, or health and safety precautions. COPA investigative staff may seek a Sworn Affidavit (with handwritten signature and notarized) from the interviewee in support of the remotely conducted interview at later date and time, though pursuant to II(A)(1)(a) above, will make best efforts to obtain the Sworn Affidavit within 30 days of receipt of the complaint. However, pursuant to this policy, COPA investigative staff will not seek to conduct an interview of a Department member accused of misconduct until the investigation is designated as a CR.

COPA may receive a Sworn Affidavit Override Request from the City of Chicago Office of Inspector General (OIG), which has jurisdiction to investigate allegations of fraud, waste, and abuse by City of Chicago employees, including members of the Chicago Police Department, under exceptional circumstances (e.g., a complaint received by the OIG involving a Sergeant, Lieutenant, or Captain assigned to the Bureau of Internal Affairs). If COPA receives a Sworn Affidavit Override Request from the OIG, COPA will follow the procedures listed in IV above.

RELATED INFORMATION

<u>Title</u>	<u>Link</u>
Civil and Criminal Complaint Review	COPA Policy
Fact Gathering & Investigative Process	COPA Policy
Intake	COPA Policy
Timeliness Benchmarks	COPA Policy
Accessibility – People with Disabilities, Language Services, and Incarcerated Individuals	COPA Guidance
Civil Lawsuit Review	COPA Guidance
Criminal Proceeding Review	COPA Guidance

Misconduct Complaints Identified or Initiated by COPA	COPA Guidance
Processing Anonymous Complaints	COPA Guidance
Review and Closing Authority – Investigations Involving No Findings	COPA Guidance
COPA Notification of Charges/Allegations	COPA Form
Sworn Affidavit (Various Languages)	COPA Form

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