

**OFFICE OF THE INDEPENDENT MONITOR
CITY & COUNTY OF DENVER
COMPLAINT MONITORING GUIDELINES**

1. INTRODUCTION

In 2005, in an effort to improve police accountability to the public, the City & County of Denver created the Office of the Independent Monitor (OIM) and the Citizen Oversight Board (COB), in part, to monitor and report on the complaint handling and disciplinary processes for the Denver Police and Sheriff Departments. Complaints may be filed at any Police or Sheriff Department office, or with the OIM or the COB. Complaint forms are available at all Police Districts, detention facilities, City Council offices, the Monitor's office, and on the internet.

This document is intended to outline the OIM's review of the assignment of community complaints by the Denver Police Department.

2. COMPLAINT INTAKE

1. *Independent Monitor Intake Responsibilities:*

The Monitor's office creates, prints and distributes, at all Police & Sheriff office locations and elsewhere throughout the community, a complaint/commendation form, with pre-paid postage (addressed to the Monitor's Office) that can be used by community members to file a complaint or commendation. The form includes phone numbers for the Monitor's Office, the Police and Sheriff Internal Affairs Bureau Offices and the Citizen Oversight Board, and advises that a community member may file a complaint or commendation with any of those offices.

The Monitor's Office and the Citizen Oversight Board take complaints and commendations on-line and over the phone and encourage the Police and Sheriff Departments to do the same.

For complaints filed with the OIM or the COB or tort claims alleging police misconduct, the OIM may decline a complaint if: (i) the complaint does not state grounds over which Internal Affairs or the Monitor's Office would have jurisdiction; (ii) the complaint on its face falls into a category (listed under Principles of Complaint Handling) that Internal Affairs could automatically decline and no further information is required to make a determination; or (iii) the Monitor's Office actively monitored a police action, consulted with DPD/IAB command staff and has concluded that no inappropriate behavior took place. The Monitor may request such additional information as would be necessary to decline a complaint. If the Monitor declines a complaint, a disposition letter will be sent from the Monitor's Office to the complainant with a copy forwarded to the Commander of Internal Affairs. If a complainant has not filed a complaint with Internal Affairs or the Monitor's Office or has not cooperated in an investigation, a disposition letter need not be sent. The Monitor confers with Internal Affairs command staff before declining any complaint.

If Monitor staff is unable to resolve a complaint or there is reason to believe that the complaint should be reviewed by Internal Affairs, contact information will be obtained from the complainant, and the complaint will be forwarded to the appropriate Internal Affairs office.

Monitor staff advises complainants of the availability of a community-police mediation program. No complaint will be subject to mediation unless agreed to by the involved complainant, the involved officer(s) and approved by the Monitor and the IAB Commander or one of their designees. With respect to complaints of serious misconduct, the Manager of Safety, the Chief of Police and the Monitor must all agree before a case can be accepted into the mediation program.

The Monitor reviews all IAB case assignment decisions for reasonableness. City ordinance provides that under limited circumstances the Monitor may conduct independent investigations. The Monitor reviews all IAB and Department disposition

(closing) letters for accuracy and appropriateness and then forwards them to the complainant with a cover letter explaining the monitoring process.

2. *Internal Affairs Bureau Intake Responsibilities:*

When a complaint is received by IAB, the complaint is subject to an intake investigation by an IAB investigator. At the conclusion of the intake investigation (which will often include a telephonic or in-person interview with the complainant and a review of police reports and dispatch information), the IAB command staff makes a screening decision that determines how each of the allegations will be handled.

The IAB command staff's initial screening decision requires mature and experienced judgment. This document provides general principles that outline the Monitor's review of the Internal Affairs Bureau decision-making process.

3. IAB SCREENING OPTIONS & MONITOR REVIEW OF IAB ASSIGNMENT DECISIONS

When IAB receives a complaint, the IAB command staff's initial screening options are:

1. **IAB Investigation**. After reviewing IAB's preliminary investigation and any other readily available evidence, the command staff generally assigns for IAB investigation the allegations which:
 - (1) State a prima facie claim of disciplinable misconduct, and
 - (2) Have investigative merit (i.e., there is a reasonable possibility that an investigation either will sustain the allegation or exonerate the employee).
2. **Informal Investigation**. The IAB command staff may assign a complaint to be handled as an "informal investigation" when the complaint involves a minor violation of policy or procedure.
 - a. The Monitor's Office becomes aware of an informal assignment decision either before or shortly after that assignment decision is made. If the

Monitor disagrees with IAB's initial assignment decision, the Monitor confers with the IAB command staff and, as necessary, Department command staff regarding the appropriate assignment.

- b. District Responsibilities: "Informals" should be completed within a timely period, as defined by Department policy. Exceptions may occur when the involved employees are unavailable due to vacation, illness, or other emergencies.
 - c. District Supervisors are expected to complete the following steps upon receiving an informal complaint assignment from Internal Affairs:
 - i. Discuss the incident and the nature of the complaint with the involved officer(s) as well as the Department's expectations with respect to rules and procedures pertaining to the issues in the complaint, the complainant's perception of the officer's behavior, and alternative approaches the officer could have used to improve service.
 - ii. Document the above discussion in a complaint resolution memo (addressed to IAB).
3. **Mediation.** When the IAB command staff and the Monitor conclude that mediation will meet the needs of the Department, the complainant, and the community, the OIM's mediation vendor will contact the parties to determine whether they are interested in voluntary mediation. The Denver Police Department has adopted a policy which explains the guidelines for the assignment of complaints to the community-police mediation program. The Independent Monitor has created guidelines, protocols and Standard Operating Procedures for the operation of the mediation program which are posted on the Monitor's website.
4. **Decline.** The IAB command staff may decline to investigate some or all of the allegations in a complaint as described in the section entitled: "Principals of Complaint Handling."
- a. **Declination Letters.** If the IAB command staff decides to decline a complaint, a letter addressed to the complainant(s) (at the complainant's

last known address) will be written by IAB staff which explains the reasoning behind this decision. That letter will be forwarded to the complainant by the Monitor's Office after a review of the case assignment decision and a conclusion that the decision is reasonable and appropriate.

- b. In addition to declining a complaint, the IAB command staff may forward information about a declined allegation or complaint to another Department official (e.g., Chief, Division Chief, or District Commander) for their information only or for further review and possible action.

5. **Administrative Referral/Service Complaint.** If a complaint relates to issues involving policy, procedure or training, the complaint can be referred to the Chief's Office, the appropriate Command Officer, or the Monitor's Office. If it is unlikely that the complaint can be proven, the complaint can be referred to the involved officer(s) supervisor for further review to decide whether further action is necessary or appropriate.
6. **Monitor review of IAB assignment decisions & IAB disposition letters.** The IAB command staff notifies the Monitor of the disposition of each allegation in every complaint through timely data entry in IAB's database (which is available to OIM personnel) and through transmittal of a letter addressed to the complainant advising of the assignment decision and the facts supporting the decision. If the Monitor disagrees with a decision, the Monitor confers with the IAB Commander (and, as necessary, Department command staff up to and including the Manager of Safety) to determine the appropriate action. Upon resolution, the Monitor forwards the IAB letter to the complainant with a cover letter explaining the Monitor's involvement in the complaint handling process.
7. **Police Department's Personnel Assessment System (PAS):** The DPD Professional Standards Unit will track all complaint for purposes of managing employee conduct through the Department's *Personal Assessment System*. The

Monitor's Office reviews the Department's use of the PAS on, at least, an annual basis and provides technical support to the Department in order to assist in identifying officers who may be engaged in problematic conduct.

4. EVALUATING PRELIMINARY INVESTIGATIONS

The IAB command staff's initial screening decisions are based in part on an evaluation of the evidence gathered during the intake investigation, other available evidence, and an assessment of the Department's ability to successfully investigate a complaint.

Sometimes the evidence on which IAB command staff makes screening decisions is based on evidence that may be inconsistent, contradictory, biased, or otherwise of questionable reliability.

- a. Evidentiary guidance. The Monitor reviews IAB command staff's screening decisions based upon standard evidentiary principles and the guidance described below:
 - (1) A witness' credibility: Complainants, officers, and other witnesses are presumed to be truthful, but the presumption may be overcome by contradictory evidence or circumstances or evidence of bias, self-interest, or past untruthfulness.
 - (2) A witness's reliability: i.e., the witness's ability to observe, remember, and report an incident. For example, was the witness in a position to observe the incident? Was the witness under the influence of an intoxicant at the time of the incident or the time of the complaint?
 - (3) The internal logic and probability of a witness' statement for the effect it has on the witness' credibility and reliability. IAB is not bound to accept as true statements that are highly improbable or illogical on their face.

- (4) A complainant's past history of making demonstrably inaccurate statements for the effect it has on the witness' credibility. Similarly, an employee's past history of inaccurate statements or acts of misconduct.
- (5) Whether information is corroborated by independent witnesses or physical evidence.

5. PRINCIPLES OF COMPLAINT HANDLING

To fulfill its mission, IAB needs administrative mechanisms to receive and evaluate complaints of police misconduct. These mechanisms, known as the intake and screening processes, are administered by IAB and reviewed by the Independent Monitor on a routine and daily basis.

As routine and repetitive as intake and screening may appear, it is not an assembly line on which the inputs, assemblies, and outputs are always the same. IAB would be unable to operate effectively if it did not exercise judgment about which complaints to accept, which to dismiss, and which to refer for investigation or other action. These judgments are made many times daily by the staff. This document discusses principles the Monitor uses to review judgments made by IAB.

The principles are not mechanical rules. They recognize that while complaints may have patterns or similarities, no two are identical. They recognize that it is impractical, indeed impossible, to establish a "rule" for every circumstance. The principles expect human beings to make informed judgments that are rational, independent, consistent, and transparent. They acknowledge the value of swift and certain resolutions for both community members and Department personnel. Finally, they acknowledge that IAB has an obligation to use public resources wisely, which means making choices about priorities.

The Monitor has worked with IAB to develop criteria for initial screening of complaints. The Independent Monitor regularly reviews IAB's application of them, including monitoring IAB decisions to dismiss complaints and to recommend changes as needed.

The Denver Police Department's complaint screening guidelines can be found in Operations Manual Section 503.01 (Complaint and Discipline Procedures for Sworn Officers), Section (4)b which is copied herein:

4. A complaint may be dismissed for the following reasons:
 - a. Mediation: Mediation is a voluntary process involving numerous stakeholders, including community members, police officers, police administration and the Independent Monitor. There is no right to mediation. Even if a complaint is eligible for mediation, any stakeholder may decline to allow a complaint to be resolved through the mediation process for any reason. No stakeholder shall be required to state the reason for declining to participate in a mediation or agreeing to assign a case for mediation. Statements made during mediation cannot be used against a police officer in a criminal or civil matter. Furthermore, the decision to mediate a matter or not to mediate a matter cannot be considered during disciplinary proceedings in comparing the discipline issued in previous matters to that issued in a pending matter (*i.e.*, cannot be used for purposes of considering "consistent discipline"). A complaint will be dismissed upon the completion of a mediation session administered by the Monitor's Office.

1. A complaint may be considered for mediation if it resulted from a failure to communicate or a lack of communication such that the allegation would be resolved better through mediation than through the formal disciplinary process and if it meets any other requirements set forth below. A complaint which, if proven, could constitute a violation of RR-138, Discrimination, Harassment, and Retaliation, may be eligible for mediation only in accordance with **the provisions of the Department of Safety EEO Investigation Procedures.**

- a. Any allegation of misconduct that falls

into one of the following conduct categories, as presented in the Discipline Handbook, is ineligible for mediation:

1. Category E: Conduct that involves the serious abuse or misuse of authority, unethical behavior, or an act that results in an actual serious and adverse impact on officer or public safety or to the professionalism of the Department.
 2. Category F: Any violation of law, rule or policy which: foresee ably results in death or serious bodily injury; or constitutes a willful and wanton disregard of Department values; or involves any act which demonstrates a serious lack of the integrity, ethics or character related to an officer's fitness to hold the position of police officer; or involves egregious misconduct substantially contrary to the standards of conduct reasonably expected of one whose sworn duty is to uphold the law; or involves any conduct which constitutes the failure to adhere to any contractual condition of employment or requirement of certification mandated by law.
- b. Any allegation of misconduct which, if proven, could constitute a violation of any rule that the Denver Civil Service Commission has designated as making an applicant ineligible to take a promotional examination for, or to be promoted to, the ranks of Sergeant, Lieutenant, or Captain is ineligible for mediation.
 - c. Any allegation of misconduct that falls into the following conduct category, as presented in the Discipline Handbook, is eligible for mediation only if the Manager of Safety, the Chief of Police, and the Independent Monitor all agree that mediation is appropriate.

1. Category D: Conduct substantially contrary to the values of the Department or that substantially interferes with its mission, operations or professional image, or that involves a demonstrable serious risk to officer or public safety.
- d. Any allegation of misconduct that falls into one of the following conduct categories, as presented in the Discipline Handbook, is eligible for mediation only if the Internal Affairs Bureau and the Independent Monitor agree that mediation is appropriate.
 1. Category A: Conduct that has a minimal negative impact on the operations or professional image of the Department.
 2. Category B: Conduct that has more than a minimal negative impact on the operations or professional image of the department; or that negatively impacts relationships with other officers, agencies or the public.
 3. Category C: Conduct that has a pronounced negative impact on the operations or professional image of the Department, or on relationships with other officers, agencies or the public.
- e. Even if a complaint is eligible for mediation, the Manager of Safety, the Chief of Police or his/her designee, or the Monitor or his/her designee has the authority to decide for any reason that a case should not be assigned for mediation.
2. Mediation Procedures: If the complainant expresses an interest in mediating the complaint, that fact shall be documented on the Commendation/Complaint Intake Form which will be forwarded to Internal Affairs for further review. Both the IAB Commander and the

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Monitor must agree that a complaint is appropriate for mediation for the complaint to be assigned to the mediation program.

- a. The complainant will be advised that the complaint is eligible for mediation, and a determination will be made whether the complainant is still interested in mediation.
- b. If a complaint has been approved for mediation, a notice will be sent in writing by the Office of Independent Monitor to the involved officer(s), with a copy to their commanding officer, which shall include: the complaint number, the name of the complainant(s), the nature of the allegations, an explanation of the mediation program, an advisement to the officer(s) of the IAB and Monitor's conclusion that the case is appropriate for mediation, a request from the Monitor that the involved officer(s) contact the Monitor's Office within the officer(s) next five (5) working days of receipt of the notice, an explanation that participation in the mediation program is voluntary and that upon completion of the mediation, the complaint will be dismissed. A failure to respond to the request shall be construed to mean the officer has declined the opportunity to mediate the complaint.
- c. The involved officer's supervisors shall ensure that the IAB mediation notice is delivered to the involved officer(s) as soon as possible.
- d. If any of the involved officers decline to participate in mediation, the complaint shall be returned to the intake process in accordance with normal IAB policies and procedures.
- e. If a complainant fails to appear for a scheduled mediation, without good cause as determined by the Chief of Police or his designee, the involved officer(s) will be provided with the choice of either

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rescheduling the mediation or having the case dismissed by IAB.

- f. If any of the involved officers fail to appear for a previously scheduled mediation, without good cause, the Monitor will notify IAB so that appropriate action can be taken. The complaint may then be processed by IAB as per normal policies and procedures.
 - g. Upon completion of the mediation, the complaint will be dismissed. No new complaint shall be accepted based on the conduct of an officer during mediation. The mediation session shall be confidential as per C.R.S. §13-22-307 and the Colorado Council of Mediators Revised Code of Professional Conduct, Section V and there shall be no requirement that an agreement be reached during the course of mediation.
- b. Judicial or Administrative Review: The complainant could reasonably be expected to use, or is using, another remedy or channel for the grievance stated in the complaint. Complaints that are subject to judicial, administrative, or other review which will explicitly or implicitly require a finding or ruling on the conduct that is the subject of the complaint may be dismissed. A complaint should be dismissed on this basis only if the alternative channel is reasonably accessible to the complainant and can provide an adequate remedy.
- c. Untimely: The complainant delayed too long in filing the complaint to justify present examination. IAB may waive the timeliness requirement for good cause.
- 1. Except for good cause, complaints of minor misconduct involving courtesy, communications, and minor rules violations should be filed within sixty (60) days of the incident.

2. Except for good cause, complaints of serious misconduct including, inappropriate force, egregious acts of disparate treatment, or major rules violations should be filed within six (6) months of the incident. IAB may waive the time limit if there is substantial corroborating evidence of the misconduct.
 3. There is no specific deadline for complaints alleging criminal conduct or corruption. Such complaints will be evaluated on their merits with due consideration for the quantity and quality of available evidence.
- d. No Misconduct: Even if all aspects of the complaint were true, no act of misconduct would have occurred. An allegation that fails to describe at least a potential violation of federal, state, or municipal law, or City or Department policy will be dismissed. Occasionally, a complaint that fails to state misconduct may merit a referral to the Chief's Office for policy or other considerations or to mediation as a means of improving police-community relations. A complaint may be dismissed if it is apparent that no misconduct was committed and if it is likely that additional investigation would not reach a different conclusion.
- e. False or Trivial: The complaint is trivial, frivolous, false, or not credible.
1. Allegations determined to be intentionally and materially false shall be dismissed.
 2. Trivial or frivolous complaints may be dismissed. Trivial or frivolous complaints allege minor technical violations of procedural rules which have negligible adverse effects on the public or the credibility of the Department.
 3. Complaints that are grossly illogical or improbable may be dismissed during intake by IAB or recommended for dismissal by District or Bureau supervisors, per the procedure outlined in OMS 503.01(4)(b). However, care and compassion must be exercised to ensure that a full, fair and complete investigation is made of complaints made by those who may be suffering from a mental illness.
- f. Third-Party Complaints: A complainant must generally

have a reasonably direct relationship to the incident in order to file a minor complaint. Complainants are considered to have a direct relationship if they were directly affected by the alleged misconduct (first-hand sources), witnessed the alleged misconduct (second-hand sources), or have special, professional, or organizational knowledge about the alleged misconduct (e.g., a lawyer, a judge, etc.)

1. Third-hand or anonymous complaints that allege corruption or other very serious police misconduct will not be dismissed.
2. Dismissal is not allowed for third-party complaints of less serious misconduct if there is a reasonable explanation why a person with standing has not filed a complaint (e.g. the person who was directly affected is a minor child; is elderly, disabled, or deceased; cannot communicate easily in English is not a citizen; is wanted on criminal charges; or has been threatened, etc.).
3. Anonymous complaints of minor misconduct may be dismissed. However, supervisors will urge the complaining party to encourage a person with standing to file the complaint.

- g. Complaints about Repeatedly Reviewed Categories of Police Activity: IAB may receive allegations about some categories of police action (e.g. police procedures related to photo radar operations) that in the past have been repeatedly reviewed, preliminarily investigated, and subsequently dismissed by IAB. The discretion to summarily resolve a category of complaints should be exercised carefully with due regard to the nature and seriousness of the complaints.

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- h. History of Unfounded Complaints: Occasionally, a single individual repeatedly files non-meritorious, unfounded, or duplicative complaints, diverting time, attention and resources from other complaints. The IAB Commander may authorize in writing that repeated complaints from specifically-named individuals receive special handling. District and Bureau supervisors may also recommend dismissal and/or special handling for repeated complaints from specifically-named individuals. Special handling may mean that designated persons are required to file their complaints in writing or that they not be interviewed as part of the intake investigation. This procedure may be used if IAB can demonstrate that a person:
 - 1. Has a history of filing unverifiable, non-credible, or non-meritorious complaints and was warned in writing that the filing of similar complaints in the future may resulting special handling, rapid disposition, or other specified actions, or;
 - 2. Previously filed a demonstrably false complaint. The discretion to specially handle complaints from named individuals must be exercised with great care and only with a supporting record.

- i. Complainant Withdraws: The complainant withdraws the complaint or fails to complete the necessary complaint steps. The complaint may be dismissed if the complainant requests that it be withdrawn or explicitly agrees that his or her concern has been resolved and that no further action need be taken on the complaint. The complaint may also be dismissed if the complainant cannot be located, does not respond to requests for information, or fails to complete other necessary steps in the complaint process. Whether dismissed during the intake process or during post-intake screening, the file needs to demonstrate a good faith effort to communicate with the complainant. The complainant's request to withdraw a complaint or failure to cooperate in an investigation does not require that IAB dismiss a complaint.

- j. Unable to Identify Officer: The identity of the officer cannot be determined. In some cases there is no reasonable means of identifying the employee who is alleged to have committed misconduct. Depending on the nature of the complaint, dismissal may be prudent and proper to conserve limited public resources. The complaint may be dismissed if, after a good faith effort, the involved employee cannot be identified and it would be unlikely that

1 the employee would be identified. IAB may forward the
2 complaint to an appropriate District or Department
3 Commander for information and educational purposes.

- 4 k. No Jurisdiction: DPD lacks jurisdiction. The authority to
5 dismiss for lack of jurisdiction is inherent in the limited
6 sovereignty of the City and County of Denver. IAB will
7 dismiss complaints over which it has no jurisdiction,
8 including complaints against person who were not
9 employed or supervised by DPD at the time the alleged
10 misconduct was committed. If possible, IAB will refer the
11 complainant to the proper department, agency or
12 government. Complaints brought against Career Service
13 employees may be taken by IAB or at any District or
14 Bureau and will be forwarded to IAB for further action.

15 The DPD lacks jurisdiction to discipline persons it no
16 longer employs. As such, a complaint may be dismissed if
17 the employee resigns, retires or will no longer be employed
18 by the Department by the time the investigation and
19 discipline process can be completed. However, in cases of
20 serious misconduct by former employees, the IAB
21 Commander may:

- 22 1. Conduct an investigation and refer it to the District
23 Attorney's Office and/or place the findings in the
24 employee's IAB or personnel file, or
25 2. Review the actions of the employee's supervisors,
26 or
27 3. Review the Department's policies and training
28 curriculum.
29 4. If it appears that the employee may be rehired by
30 the Department or by another law enforcement
31 agency, IAB may elect not to dismiss the complaint
32 until after an investigation has been completed.
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34 The Monitor's Office was involved in the writing of the above-noted policy at the time of
35 the inception of the Monitor program in 2005. At that time, the Monitor recommended
36 the adoption of a "filtering" process for the assignment of complaints to ensure the
37 appropriate use of valuable Department resources in the complaint handling process.