

## OFFICE OF CITIZEN COMPLAINTS

### FREQUENTLY ASKED QUESTIONS: OFFICERS

Q. Why is this matter an OCC complaint?

A. Section 4.127 of the San Francisco City and County Charter contains the law establishing and governing the Office of Citizen Complaints. It states, in part: “The Office of Citizen Complaints shall investigate all complaints of police misconduct, or that a member of the Police Department has not properly performed a duty...” The OCC is obligated by law to receive all complaints of police misconduct or neglect of duty and to investigate all complaints we receive, with very few exceptions – only those complaints which are unquestionably proper conduct on their face or those made by another Police Department member.

In this case, as in all OCC cases, we were contacted by someone who claims to be a victim of or a witness to San Francisco Police Department misconduct or neglect of duty. This starts the OCC investigation process, and evidence must be gathered to complete the investigation. Your statement is an important part of the evidence in this case.

Q. How are the allegations in the complaint determined?

A. There are two types of allegations in an OCC complaint:

- Allegations presented by the complainant

The OCC prepares allegations by summarizing issues raised by the complainant in the complainant’s statements to the OCC, both written and oral. The OCC is obligated to investigate allegations raised by the complainant without regard to their potential merit. The receipt of a complaint and the identification of allegations does not mean that the OCC has made any judgment about the validity of the complaint. Only after a thorough and impartial investigation are the facts of the complaint determined and the findings on the allegations made through the combined efforts of the OCC investigative staff.

- OCC-Added Allegations

The OCC is required by the San Francisco Charter to perform a thorough investigation, which requires a review of the entire incident that formed the basis for the complaint. During

the course of this investigative review, the OCC may note potential violations of Police Department regulations not raised by complainants because of their lack of information or legal knowledge. The Police Commission and the Courts have determined that in this situation the OCC may bring so-called added allegations. These OCC-added allegations become part of the complaint, and the investigation will cover these allegations of misconduct.

Q. What does a Notice to Appear mean?

A. The Notice to Appear notifies you that the OCC will be interviewing you in connection with its investigation of the complaint referenced on the notice. The interview is a fact-finding interview, not a hearing or a deposition. While Department General Order 2.08 requires you to answer all questions posed during this administrative investigation, there is another reason to participate: this interview is your opportunity to help us gather as much data as possible about the incident that formed the basis for this complaint. You are encouraged to submit any evidence [e.g., written documents, names of witnesses] relevant to the investigation during your interview, so that the OCC may have a clear and complete picture of the evidence before making any determinations of fact.

Q. What are my rights and responsibilities regarding an OCC interview and an OCC investigation?

- General Member Rights and Responsibilities

During the interview, the OCC investigator will question you about your own actions, and may question you about the actions of other officers and civilians connected to the incident. You are responsible for answering the OCC investigator's questions truthfully, and without evasion, as stated by Department General Orders.<sup>1</sup> You are required to answer the OCC investigator's questions about anything connected with on-duty police activities including, but not limited to, the incident under investigation, police actions related to the incident, standard police practices and procedures, and your training and experience.

OCC investigators will treat you professionally and courteously during the interview, and you also have the responsibility to act professionally and courteously and to direct your representative to act similarly. Please be aware that your failure, or your representative's failure, to act in a professional and courteous manner during OCC interviews may result in disciplinary action regarding your conduct or your representative's conduct.

- Named Member Rights and Responsibilities

If you have been designated as a **Named Member** on your Notice to Appear, you have been identified as possibly being involved in the incident and could be subject to disciplinary action as a result of the investigation of this complaint. Even if the complaint form you receive does not list your name, your designation on the Notice to Appear as a Named

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<sup>1</sup> See DGO 2.08, DGO 2.01 Rule 21, and DGO 2.04 Section I.A.

Member means that you have all the rights afforded you by the Public Safety Officer's Procedural Bill of Rights Act [California Government Code Section 3300 *et. seq.*] such as:

1. You have a right to have a representative of your choice present during the interview, with some exceptions as to whom you choose to represent you. (For example, your representative of choice cannot be an officer who will be questioned in connection with the incident under investigation.)
2. You have a right to tape record the interview.
3. You have a right to know the nature of the investigation. To accomplish this, Named Members receive a copy of the Citizen Complaint Form (SFPD/OCC Form 293) attached to the Notice to Appear.

If you are questioned as a Named Member, you alone must answer the OCC investigator's questions truthfully and without evasion.<sup>2</sup> Your representative may not provide answers on your behalf, and may not interfere with the OCC investigator's questioning. You and your representative will be given adequate time at the conclusion of questioning by the OCC investigator to clarify or expand on any issues remaining, to offer witnesses or other evidence relevant to the investigation, and to make statements for the record.

- ID Pending

You may be questioned as a Named Member even though your name does not appear on the Citizen Complaint Form (SFPD/OCC Form 293). This can occur if there is an allegation in the complaint in which an identification of the officer involved has not yet been made, designated as **ID Pending** on the complaint form. Because you could potentially be named for this allegation as the investigation progresses, we want to afford you your full rights under the Public Safety Officer's Procedural Bill of Rights Act during your interview. Being questioned as an ID Pending member does not necessarily mean that you will ultimately be named in the allegation.

If the investigation results in your being named on any ID Pending allegation, you will be notified and will receive a copy of the Citizen Complaint Form with your name on it. **If you do not receive this notification, then you have not been named, this complaint will not be entered in your personnel file, and you will not receive notice of its disposition.**

- Witness Member Rights and Responsibilities

If you are being interviewed as a **Witness**, you are not being investigated but still must be interviewed in order to facilitate a thorough investigation of the complaint. You are, however, required by Department General Orders<sup>3</sup> to answer all questions truthfully and without evasion, and will be held to standards of professional conduct in your interview as a witness.

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<sup>2</sup> See DGO 2.08

<sup>3</sup> Rule 21 of DGO 2.01 and Section I.A of DGO 2.04

As you are not being investigated, the Government Code sections regarding investigations of peace officers do not apply: you will not receive a copy of the complaint form, you do not need to have a representative present, and you may not record the interview.

Q. How are findings reached in OCC complaints?

A. During the investigation, the OCC gathers evidence pertinent to the allegations and researches the laws and rules that apply to the allegations. When these processes are completed, the OCC analyzes the facts as shown by the evidence in light of the pertinent laws and rules, and makes a preliminary determination of the disposition of the allegations.

Findings of fact and interpretations of laws and rules are made by the combined efforts of the OCC investigative staff, not simply by the individual investigator. All findings are reviewed by at least two levels of supervision before they are approved by the OCC Director. Findings of misconduct, known as Sustained Allegations, are also carefully reviewed for sufficiency by OCC Legal Staff before they are approved by the OCC Director.

Q. What if I do not agree with the OCC's findings?

A. The OCC mails letters to the complainant and all Named Members<sup>4</sup> advising them of our preliminary findings on the allegations in the complaint. These letters also inform parties of their right to request an Investigative Hearing<sup>5</sup> if they are dissatisfied with the findings on any of the allegations in the complaint, and how to make such a request. Requests for Investigative Hearings can be made in writing within ten (10) days of receipt of the findings letter. Under some circumstances, this time can be extended by the hearing coordinator if a request for an extension is made in writing.

If you are dissatisfied with the findings that the OCC has reached, or believe that the investigation may be missing evidence after reviewing the case with the investigator, please inform the OCC Director in the form of a written Investigative Hearing request. Once the ten day period has run without a hearing being requested, the findings become final. If a hearing is requested, the results become final after the Director denies the hearing request or after the Investigative Hearing process is complete.

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<sup>4</sup> If you were interviewed as a Named Member on an ID Pending allegation, and do not receive a disposition letter, it means that you were not named in connection with this complaint and that the complaint will not be entered on your complaint history record.

<sup>5</sup> Please see the OCC informational brochure for more information about Investigative Hearings.