



DEPARTMENT NOTICE

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Department General Order 2.08 “Peace Officer Rights in Disciplinary Investigations” Update Packet #85

The purpose of this notice is to announce the revised Department General Order 2.08, *Peace Officer Rights in Disciplinary Investigations*, adopted by the Police Commission on May 3, 2023. The updates in this policy include, but are not limited to the following:

1. A summary of when administrative interview rights apply under the *Public Safety Officers Procedural Bill of Rights Act* (“the Act”).
 - a. This informs members of when they are entitled to assert their administrative rights and informs supervisors of when they must afford those rights.
2. A summary of what pre-administrative interview rights are afforded under the Act.
 - a. This includes a summary of the rights of notice and representation.
3. A summary of what interview rights are afforded under the Act.
 - a. This includes a summary of the rights officers are entitled to during administrative interviews.

This general order does not expand nor contract administrative rights afforded by California state law. The purpose is merely to explain these rights.


Members are expected to have a working knowledge of all directives applicable to their respective assignment and comply with their provisions, per DGO 3.01, *Written Communications*. Members shall obey all written orders, policies, and procedures of the Department, per DGO 2.01, *General Rules of Conduct*.

Department General Order update packet #85 is attached to this notice and is available to members on the PowerDMS site.

Associated Policies:

DGO 2.04, *Complaints Against Officers*

DGO 2.07, *Discipline Process for Sworn Officers*


WILLIAM SCOTT
Chief of Police

Per DN 20-150, all sworn & non-sworn members shall electronically acknowledge this Department document in PowerDMS. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be sent to sfpd.writtendirectives@sfgov.org who will provide additional information.

Safety with Respect

Peace Officer Rights in Disciplinary Investigations

2.08.01 PURPOSE

The Public Safety Officers Procedural Bill of Rights Act (“the Act”), Government Code sections 3300-3313, establishes various employment rights for sworn members. Among other things, the Act establishes various peace officer rights regarding interviews during administrative (i.e. disciplinary) investigations. This General Order re-affirms pertinent rights applicable to such investigations and administrative interviews. This General Order neither expands nor contracts the rights identified in the Act.

2.08.02 POLICY

- A.** When Rights Apply - The interview¹ rights of the Act apply when a sworn member is under investigation and subject to an interview that could lead to punitive action.
 - 1. Witness officers are not entitled to the rights of the Act because they are not subject to an interview that could lead to punitive action.
 - 2. The interview rights of the Act do not apply in the normal course of duty, formal or informal counseling, instruction, or other routine or unplanned contact with a supervisor or any other member of the Department.
 - 3. The interview rights of the Act do not apply to an investigation concerned solely and directly with alleged criminal activities.

- B.** Pre-Interview Rights - The following rights apply prior to an officer being subject to an administrative interview.
 - 1. The member shall be informed about the nature of the investigation prior to an interview.
 - 2. The member shall be entitled to the representative of their choice, if desired, and a reasonable opportunity to prepare for the interview with that representative.
 - a. The member must choose a representative who is reasonably able to attend the interview.
 - b. The representative may not be a person subject to the same investigation.
 - 3. Members are not entitled to pre-interview discovery.
 - 4. Prior to the submission of a memorandum regarding a matter that could lead to disciplinary action against the member, a member has the right to have a representative review the member’s memorandum. Supervisors must advise members of the right to a representative when ordering a member to draft such a memorandum.

¹ For purposes of this General Order, “interview” is used in the same manner as “interrogation” in the Act.

C. Interview Rights - The following rights apply during an administrative interview.

1. The interview shall be conducted at a reasonable hour, preferably at a time when the member is on duty or during normal waking hours, unless the seriousness of the investigation requires otherwise.
2. The interview shall last for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The member shall be allowed to attend to their own physical necessities.
3. The member shall not be subjected to offensive language or threats of punitive action, except that a member refusing to respond to questions or submit to interview shall be informed that failure to answer questions may result in punitive action.
4. The member shall only be asked questions by no more than two investigators at any given time.
5. The interview may be recorded. Members may not use Department property, including body-worn cameras, to record administrative interviews.
6. Members retain their Constitutional right to remain silent. Members who invoke their right to remain silent will be provided with a “Lybarger” admonishment. However, as a condition of employment, the member must answer all questions posed during the interview. Any subsequent statement may be used for administrative purposes but may not be used in any subsequent criminal action against the member. All statements, declarations, or answers to questions regarding the investigation shall be truthful and non-evasive.

References

DGO 1.06, Duties of Superior Officers
DGO 2.01, General Rules of Conduct
DGO 2.04, Complaints Against Officers
DGO 2.07, Discipline Process for Sworn Officers
Government Code §§ 3300-3313