OFFICE OF THE MAYOR

OFFICE OF CITY INVESTIGATIONS
MONTGOMERY, ALABAMA

CITY INVESTIGATIONS 2020 HANDBOOK

City of Montgomery

City Investigations Handbook

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OFFICE OF CITY INVESTIGATIONS
CITY OF MONTGOMERY, ALABAMA

Chapter 1

Policy, Authorities, and Responsibilities

1.1 INTRODUCTION

This directive implements policy and standard operating procedures for the City of Montgomery's Office of City Investigations **(CI).** It is applicable to all City of Montgomery employees. There are no releasability restrictions on this directive.

Compliance with this directive by all City of Montgomery employees is mandatory.

The Office of City Investigations is the ***Mayor's*** direct independent investigative arm and is the central focal point for complaints and investigations of wrong-doing, as well as citizen complaints and claims against the City.

Refer to Chapter 2 of this directive for procedures to file a complaint or report wrongdoing.

CI is a separate ***department*** directly reporting to the Mayor as his investigative office for all municipal affairs. The CI staff works directly on behalf of the Mayor with his delegated legal authority. With the approval of the Mayor, it also provides the functional and legal methodology that would compel all offices (and City employees) to fully cooperate with CI, *via subpoena*, if necessary. Failure to comply will result in disciplinary action up to and including termination.

The CI Director also acts to facilitate counsel and liaison with the City Attorney's Office and administrative offices of the City.

All Cabinet members, department heads, supervisors, and employees shall comply with any request from CI in the investigation of each case.

1.2 About This Handbook

This directive/policy handbook-instruction explains: (1) CI's legal authorities, (2) CI's mission, (3) how to file a complaint, (4) procedures to follow when a complaint is filed, (5) how an investigation will proceed, (6) how a report of investigation will be written, and (7) responsibilities of supervisors. This handbook is the standard reference source when a complaint or allegation of wrongdoing is made. Copies will be provided to all City departments.

1.3 Legal Authority

CI's legal authority is delegated on behalf of the Mayor, City of Montgomery, based on the Mayor's responsibilities dictated in Act 618.

Sec 9.03 of Act 618 which is the legal authority for the City states:
"Investigations by council or mayor":

> "The council, the mayor or *any person or committee authorized by either of them shall have power to inquire into the conduct of any office, department, agency or officer of the city* and to ***make investigations*** as to municipal affairs, and for that purpose may *subpoena* witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and *shall be punishable by fine not to exceed $100 or by imprisonment not to exceed six months, or both.*"

1.4 Mission Statement

On behalf of the Mayor, City of Montgomery, the mission of CI is to investigate complaints and allegations of misconduct, and fairly and objectively present findings of fact for supervisory action or City resolution.

CI's intensive investigations serve to help maintain the credibility, respect, integrity, and reputation of City agencies and departments within the City government and from the public they serve. CI will also act as a resource and/or consultant for other agencies including City Legal who have received complaints from a staff member, the public, or any other entity.

The results (findings of fact) of a CI Report of Investigation will be supplied to the department head, supervisor, and/or the City Legal Department for further use in any disciplinary or legal action.

CI may be tasked to investigate a broad range of issues related to misconduct or wrongdoing. These include (but are not limited to): violations of rules and regulations, allegations of harassment in any form, fraud, waste and abuse of City resources, abuse of authority, restriction, ethnic slurs, civil rights violations, supervisor retaliation (reprisal), misuse of City resources, discharge of weapons, death while in protective custody, complaints made by the public or department member against the City or any City employee.

The Office of City Investigations answers directly to the Mayor, City of Montgomery. The department will include a senior staff attorney and a staff of investigators with extensive operational experience in various City departments, or investigative experience in investigative disciplines.

1.5 Outreach and Education

The Office of City Investigations shall maintain a proactive outreach program. It is City policy that employees have the right to contact CI at any time. However, employees must also know that they are encouraged to handle complaints and disputes at the lowest supervisory level possible before engaging CI. Supervisors and managers should be given the first opportunity to resolve issues.

CI will maintain an active outreach program that describes all CI activities and teaches employees how to effectively use the complaint system. Programs, briefings, and/or information should be presented to new hires at a new-comers orientation programs, and when possible, at the City's leadership and supervisory training programs. Supervisors, managers, and all employees should be familiar with CI operations.

1.6 Supervisor Responsibilities

City Departments will not ignore allegations of wrongdoing or misconduct. If wrongdoing or misconduct is minor in nature and can be handled within the supervisor's departmental chain-of-command, it does not need to be reported to CI. However, if the allegation(s) of wrongdoing cannot be handled within the supervisor's department, or there is any question regarding who should investigate

the allegation(s), it should be immediately reported to CI (verbally or in writing). All allegations will be filed in accordance with Chapter 2 of this handbook.

Supervisors will fully cooperate with City Investigations to ensure that employees scheduled for interviews attend as scheduled.

SECTION 1A – THE CITY OF MONTGOMERY, OFFICE OF CITY INVESTIGATIONS

1.A1 OVERVIEW

This section defines the roles and responsibilities of the CI staff and other offices and agencies involved in the CI process.

SECTION 1B – AUTHORITY OF THE CITY OF MONTGOMERY, OFFICE OF CITY INVESTIGATIONS

1.B1 KEY TERMS

This section uses the following key terms: *Office of City Investigations (CI), Investigating Officer (IO), and Report of Investigation (ROI).*

1.B2 STATUTORY AUTHORITY

The Office of City Investigations derives statutory authority delegated from the Mayor, as described in Act 618, City of Montgomery.

1.B3 INVESTIGATIONS NOT COVERED BY THE AUTHORITY DELEGATED TO CI

Personnel who conduct administrative inquiries or investigations governed by other City of Montgomery policy directives and instructions will not cite this instruction as the authority.

Criminal investigations will be completed by law enforcement personnel in accordance with their delegated authority.

1.B4 AUTHORITY TO DIRECT INVESTIGATIONS

The Mayor, City of Montgomery, may direct the Office of City Investigations to conduct an investigation at any time. On behalf of the Mayor, the Director of CI,

shall have the singular authority to direct investigations, appoint investigating officers (IOs), and approve Reports of Investigation (ROI).

In addition, when special expertise is needed, the Mayor, or CI Director on behalf of the Mayor, may temporarily appoint an employee from *any* City department (i.e., accounting, engineering, law, etc.) to assist CI in an investigation. This will be done via a CI appointment letter signed by the CI Director. (See Attachment 2.)

1.B5 AUTHORITY TO CONDUCT INVESTIGATIONS

Appointed IOs are authorized to conduct CI investigations within the scope of their appointment and under the authority and guidance of this instruction. For each investigation, the CI Director will sign a letter (Attachment 2) appointing the IO to investigate the case. The IO's responsibilities for investigating and reporting expire when the final Report of Investigation is approved by the CI Director for distribution to designated persons/departments.

1.B6 AUTHORITY FOR CI ACCESS TO MUNICIPAL DEPARTMENTAL RECORDS

To carry out their responsibilities, CI staff members and IOs must have expeditious and unrestricted access to, and copies of, all applicable City of Montgomery municipal records, reports, investigations, audits, reviews, documents, papers, recommendations, personnel files, or any other relevant material authorized by law and policy. Investigators are authorized access to all documents and all other evidentiary materials needed to discharge their duties to the extent allowed by law and policy.

NOTE: Access to some records may be limited by the record's owner.

No municipal employee may deny CI or a properly appointed IO such access.

CI shall coordinate with the City Legal Department through the CI Senior Staff Attorney to ensure records are properly obtained (e.g. medical records, e-mails, phone records, etc.).

NOTE: If a subpoena should be required in order to compel the appearance of witnesses, production of books, papers, and other evidence, the CI Director will consult and coordinate with the City Legal Department before proceeding. (See Attachment 5F.)

SECTION 1C – OFFICE OF CITY INVESTIGATIONS COMPLAINTS RESOLUTION AND INVESTIGATIONS PROGRAM

1.C1 CI PROGRAM POLICY

The CI Complaints Resolution and Investigations Program is a City of Montgomery leadership and management tool that:

- Indicates when Mayoral or departmental involvement is needed to respond to employee misconduct and/or wrongdoing, correct procedural weaknesses, and ensures City resources are used effectively and efficiently

- Provides findings of fact(s) surrounding an issue so that City leadership may resolve problems affecting the City's mission promptly and objectively

- Creates an atmosphere of trust in which issues can be objectively and fully investigated and resolved without the fear of retaliation or reprisal to the complainant

- Assists department heads, supervisors, and citizens by instilling confidence in the City of Montgomery leadership

1.C2 HOW CI ASSISTS THE MAYOR AND CABINET

Personnel complaint resolution and CI reports help the Mayor, Cabinet, and department heads discover and correct problems affecting the productivity and morale of personnel. CI activities can help identify the underlying causes of complaints and may prevent more severe symptoms or costly consequences such as reduced performance, accidents, poor quality work, poor morale, rule violations, policy violations, or loss of resources.

Even though allegations may not be substantiated, the evidence or investigative findings may reveal systemic, morale, or other problems that impede efficiency and effectiveness.

1.C3 CI MISSION FOCUS

The primary charge of CI is to sustain a credible investigative system by ensuring the existence of responsive complaint investigations characterized by objectivity, integrity, and impartiality.

CI ensures the concerns of all complainants and the best interests of the City are addressed through objective fact-finding.

To create an atmosphere that encourages submission of well-founded complaints, CI personnel must:

- Ensure their personal behavior is above reproach
- Enhance openness and approachability by briefing the CI Complaints Resolution and Investigations Program at the departmental level, including departmental meetings and new employee orientation sessions
- Educate employees and City leadership regarding the rights of and protections for those employees contacting CI
- Avoid self-investigation and the perception of conflict of interest
- Be trained to conduct thorough, unbiased investigations based on fair and objective fact-finding, and be thoroughly familiar with this directive

SECTION 1D – ROLES AND RESPONSIBILITIES

1.D1 CI DEPARTMENTAL RESPONSIBILITIES

The Office of City Investigations provides CI policy guidance, develops procedures, and establishes and evaluates the Complaint Resolution and Investigations Program.

On behalf of the Mayor, CI conducts **administrative** investigations of wrongdoing such as rules and policy violations by City personnel and investigates citizen complaints and claims against the City. To accomplish its mission, CI will attempt to follow the normal City supervisory chain-of-command. However, if the situation requires, CI investigators may communicate directly with any department head,

supervisor, or City employee as required. All City employees will comply with direct requests from CI investigators and/or the CI Director.

Some cases may involve time-sensitive information and will require immediate access to personnel for interviews or to obtain related information for case documentation. If required, the CI Director, on behalf of the Mayor, may authorize CI investigators to directly schedule any employee and/or request any employee to immediately report to City Investigations for an interview.

CI does not conduct criminal investigations. The City of Montgomery Police Department is charged with this responsibility. However, CI will partner with and/or cooperate with City Law Enforcement and the City Legal Department when CI investigations reveal potential violations of law. There may be times when a CI investigation and City criminal investigation will be conducted "in parallel." In those cases, close coordination and/or cooperation between City law enforcement, the City Legal Department, and CI will be maintained. Normally, the CI Investigation will be subordinate to the criminal investigation.

CI directs investigations and provides direct oversight for all departmental investigations covered by this directive.

CI-assigned personnel will meet training and ethical/professional standards.

CI will provide reports and analysis to the Mayor as required by this directive and will support other City departments as required.

1.D2 CLAIMS PROCESSING

All claims filed with the City Clerk against the City will normally be forwarded through the Legal Department to CI for investigation and then returned to the Legal Department for processing. See Chapter 3 for instructions and Attachment 14 for the claims report format.

1.D3 CI ORGANIZATION

CI is organized as a department function and will report directly to the Mayor, City of Montgomery.

The Director, Office of City Investigations is a City of Montgomery Cabinet member.

The two-letter functional address code for the office will be "CI".

1.D4 ROLE OF THE CI DIRECTOR

The Director, Office of City Investigations is responsible directly to the Mayor, City of Montgomery and acts on behalf of the Mayor during day-to-day CI activities. The CI Director will:

- Be thoroughly familiar with and comply with this instruction
- Be responsible for planning, programming, budgeting for, and managing the CI office
- In cooperation with and approval from the Mayor's Office, ensure the CI office recruits and maintains qualified personnel in order to accomplish its mission
- On behalf of the Mayor, act as the appointing official for CI investigators and balance the workload among investigators, as required
- Act as the approving authority for completed Reports of Investigation
- Act as the official spokesperson for the CI office to coordinate with City departments and/or outside agencies

When an allegation(s) is/are made and an employee misconduct complaint is properly initiated in accordance with this directive, the CI Director will inform the Cabinet member/department head regarding the nature of the complaint and CI's plan to investigate. This will occur before any investigation begins. Normally this will be done via official letter format (See Attachment 3). Cabinet members must keep this information provided by the CI Director CONFIDENTIAL.

1.D5 INVESTIGATOR DUTIES

Investigators assigned to City Investigations may be either merit employees permanently assigned to the office or may be appointed by the Mayor for a three-year assignment (or more) from the police department.

Police officers appointed to City Investigations will be selectively screened and nominated by their department heads (with concurrence of the CI Director) to the Mayor for approval. The Mayor shall provide written approval for each individual assigned to City Investigations.

Police officers appointed to City Investigations will serve in a full-time capacity and report directly to the CI Director. Police officers nominated for a City Investigations assignment will be experienced officers selected from senior sergeant through captain rank. Except for APOST requirements, MPD will not task CI-assigned police officers to perform police duties while assigned to CI without approval from the CI Director. Off-duty employment within the City of Montgomery related to police or security duty is prohibited.

All individuals appointed to City Investigations will complete the required training as described in Paragraph 1.E1.

Investigator case assignments and duties will be determined by the CI Director. All case investigations will be assigned in accordance with this handbook as described in Chapter 3.

CI investigators should not be constrained by additional duties that detract from their primary investigative responsibilities. Therefore, CI investigators and CI staff members should not be assigned any duties that subsequently disqualify them from conducting unbiased complaint investigations against personnel or activities of the City.

1.D5.1 INVESTIGATOR RESPONSIBILITIES

All personnel assigned to City Investigations represent the Mayor and City of Montgomery and must therefore demonstrate a continuing ability to effectively interact with individuals from a variety of educational, ethnic, and socio-economic backgrounds.

When investigating any case, CI personnel will always be sensitive to the feelings, needs, and points of view of any citizen in order to resolve complaints, grievances, and gather information. CI personnel will not argue with or verbally attack any citizen with a grievance or complaint. Treating everyone with courtesy, respect, and honesty is in the best interest of both the City and its citizens. In the event

interrogation type interview (Accusatory) is used, prior authorization from the department head with be obtained.

Unless specifically cleared by the City Legal Department or the CI Director, City Investigations staff will not discuss or reveal case investigation information. Investigation staff will treat all investigative case information as CONFIDENTIAL. In cases involving Attorney-Client Privilege, information will not be released or discussed without authorization from the City Legal Department.

All CI personnel will perform assigned duties and will fully cooperate to complete assignments as directed by the CI Director.

1.D5.2 REMOVAL FROM CITY INVESTIGATOR DUTIES

Any serious violation of City-County Personnel rules, the City of Montgomery Handbook, or the City Investigations Handbook will result in discipline (in accordance with the City Progressive Discipline Policy) up to and including termination for the first offense.

Personal behavior and/or actions that are not in the best interest of the City may result in termination or dismissal from investigator duties for the first offense.

1.D6 ROLES OF THE OFFICE OF CITY INVESTIGATIONS IN RELATION TO THE MAYOR

The roles of CI are to:

- Be the "eyes and ears" of the Mayor. Investigative fact finding can serve to inform the Mayor of matters indicative of systemic, morale, or other problems that impede City efficiency and effectiveness.

- Keep the Mayor informed of potential areas of concern as reflected by trends based on analysis of complaint data

- Function as the ombudsman, fact-finder, and honest broker in the resolution of complaints. Not all complaints result in investigations. Many times, simply taking a complaint and facilitating communication (i.e., making phone calls or asking department experts, etc.) with the right person or department will solve the issue or problem, especially when there is no evidence or assertion of wrongdoing.

- Educate and train employees of the City on their rights and responsibilities regarding the CI system.

- Assist the Mayor and departments heads in preventing, detecting, and correcting fraud, waste, abuse, and mismanagement.

- Investigate complaints and claims against the City made by the citizens of Montgomery as assigned by the CI Director on behalf of the Mayor.

To fulfill these roles, the CI must be an integral member of the Mayor's staff and have unimpeded access to the Mayor, Cabinet, department heads, supervisors, and City offices. The Mayor must ensure that CI's authority, duties, and responsibilities are clearly delineated.

The independence of the CI department must be firmly established and supported to overcome any perceived lack of autonomy that would discourage potential complainants and/or preclude disclosures of wrongdoing from being brought to the attention of CI.

1.D6.1 ON-CALL DUTY

Investigators assigned to City Investigations are considered "on call" (i.e., subject to being called in) and, therefore, may be required to respond after normal working hours or on weekends. Investigators will use their City-assigned vehicle for on-call duty. A City Investigator "called in" during other than normal working hours will be given time off. City Investigators may be called out for serious City incidents including officer involved shooting. The City Investigators will rotate on-call assignment and will be placed on the MDPS On-Call Spreadsheet as required.

Investigators called out will only be in the observant role and gather information related to administrative policy.

1.D7 MAYOR'S SUPPORT OF THE CI DEPARTMENT

Although the Mayor has the ultimate authority for the direction and conduct of CI investigations, the Mayor delegates to the Director of CI the authority to act on behalf of the Mayor on issues pertaining to the day-to-day activities of the CI Department. To support the Office of City Investigations, the Mayor should:

- Provide City resources to ensure the CI office is fully staffed, equipped, and trained

- Appoint, in writing, those individuals authorized to serve as CI investigators

- Provide complete support to the CI Director, as required

- Ensure that CI staff follows the requirements of this instruction and reassign/terminate CI staff members who fail to meet the professional and ethical standards required by this directive

- Educate City personnel about the rights and responsibilities of all personnel regarding the Office of City Investigations at cabinet meetings, staff meetings, and other gatherings as needed.

1.D8 CI REPORTS TO THE MAYOR AND MAYOR'S CI REVIEW BOARD

The CI Director will provide a monthly report to the Mayor summarizing CI cases. In addition, the CI Director will meet with the Mayor, City Attorney and the Senior Staff Attorney to discuss this report.

On a periodic basis, the Mayor may convene a Mayor's CI review board (chaired by the CI Director) with the City's designated cabinet level/senior leadership. This meeting would include a general discussion of CI cases. The discussion need not mention specific individuals by name, but focus on the general facts of a case and the follow-up action. Supervisors would discuss the action taken and why.

1.D9 REMOVING COMPLAINTS FROM THE CI SYSTEM

When complaints and allegations of wrongdoing have been recorded and assigned for investigation, the investigation will be completed.

Once a complaint has been recorded and an investigation has been assigned to an IO, the department head shall have no authority to take that complaint and resolve it through a separate investigation without prior approval of the CI Director, Mayor, and City Attorney.

In some cases, complainants may elect to withdraw a complaint from CI channels and instead submit it through supervisory channels for resolution. This must be done in writing by the complainant. CI reserves the right to proceed with an investigation

if the allegations clearly identify a recognizable wrong or violation of law, policy, procedure, or regulation. **EXCEPTION:** Allegations of reprisal/retaliation and abuse of authority **must** be investigated within CI channels when warranted.

NOTE: CI may refer a complaint to law enforcement or other administrative agency even though the complainant disagrees with the referral. Such referrals may include, but are not limited to, allegations of criminal activity, notice of danger to people and/or property, personnel matters, and problems with potential to adversely impact the City.

1.D10 CASE DATE MANAGEMENT

All CI actions (complaints, letters, documentation, interviews, photographs/evidence, etc.) shall be maintained by the CI Department and may be subject to Attorney/Client Privilege and/or Attorney Work Product. Upon completion of the investigation, the Report of Investigation (ROI) shall be sent to the department head for action and distribution as directed in the ROI or by this directive. The case file shall be scanned and retained electronically by CI. Any release of documents shall be for official purposes only. Case file data shall remain on file with the CI administrative office and/or the City Legal Department.

1.D11 ACCESS TO CASE REPORTS AND SUPPORTING INFORMATION DURING AND AFTER CI INVESTIGATION

Reports of Investigation must be treated as CONFIDENTIAL and may be subject to Attorney/Client Privilege and/or Attorney Work Product. The investigation process between IOs and anyone interviewed will also be treated as CONFIDENTIAL.

Employees interviewed during an investigation will not divulge any information related to the interview. This is because CI must conduct an impartial and truthful investigation and produce a report that does not have a possible fabrication or alignment of testimony from collaborating witnesses.

During an interview, any information or questions asked must not be shared due to the possible spoliation or tainting of evidence that could jeopardize an investigation. In addition, some cases require follow-up interviews and any outside or unofficial discussion could jeopardize the impartiality of an investigation or Report of Investigation.

Failure of employees to adhere to this requirement will result in disciplinary action to include termination.

Communication between the City Attorney's Office, department heads, and/or direct supervisor(s) regarding interviews and the investigation is confidential and shall not be discussed as it may be subject to attorney/client privilege.

Because a department head and/or supervisor may need to take some disciplinary action against an employee when the ROI is completed, they must remain "neutral" and not interfere or attempt to influence the investigation process.

During an investigation, information may be discovered that will require immediate supervisor attention. In those cases, the CI Director will decide what general information may be released.

Once signed/approved by the CI Director, completed ROIs will be sent to the Department head, Supervisor and/or the City Legal Department within one working day. These reports must be kept CONFIDENTIAL by the department head/supervisor and will not be distributed. For post-investigation disciplinary against an employee as a result of investigation findings, supervisors may request an Investigative Summary Report of the findings for the employee (Attachment 6Aiii).

1.D12 DISPOSTION OF REPORTS

When completed Reports of Investigation are provided to department heads or supervisors, they will not be copied or reproduced in any form. ROIs will not be placed in an individual's City personnel file. All ROIs will be returned to City Investigations immediately after review.

Information contained in ROIs will not be divulged to anyone without an official need to know the information. ROIs will be treated as confidential and/or Attorney/Client Information and must be safeguarded. When supervisory action is completed, ROIs will be returned to the Office of City Investigations as soon as practical for filing and storage. Supervisors will not keep ROIs any longer than necessary and will initial next to their names (page one of the ROI) and return to CI.

Completed ROIs will not be released to the subject employee. A summary report is provided to the subject employee if substantiated. The City Legal Department may authorize the release of a redacted ROI. Requests should be made through Public

Records. The City Legal Department will then determine what information contained in the ROI will be released.

1.D13 CI RECORDS RELEASE, CI FILES & PUBLIC DOCUMENTS

CI and the City Legal Department will follow policy guidelines for control of the CI records and files explained below. Completed CI investigations, or portions thereof, may be public record in accordance with existing law. Certain portions of the CI files may remain confidential as work product and/or privileged communications between attorney and client.

CI investigations are confidential until:

The investigation is completed upon a finding by the City Attorney's Office and reported to the department head or designated staff member, appropriate action is taken, and until the appeal process is concluded. However, due to their confidential nature, CI records will remain undisclosed, unless release is otherwise authorized by the City Attorney's Office, to preserve any attorney-client privilege or work-product documents. Disclosure of documents or part of the record of the investigation to a third party does not waive any privilege as it relates to other records in the investigative file. Department heads and supervisors in possession of CI reports will treat them as confidential and in accordance with attorney-client privilege or the work product rules.

The retention period for CI investigation cases is five years from case completion or as prescribed by appropriate directives.

Cases that have pending litigation will be forwarded to the City Legal Department and will not be destroyed until litigation has ceased. The City Legal Department will determine disposition of these cases.

Information regarding cases that have been worked "in parallel" with a separate criminal investigation will not be released without approval of the City Legal Department and the CI Director.

1.D14 PUBLIC ACCESS

The information received by a public officer or public official in confidence, information which contains sensitive personnel and medical records, pending criminal investigations, information received in anticipation of litigation or likely

litigation, and records which, if released, would be detrimental to the best interests of the public shall remain confidential and will not be disclosed to the public without a proper court order and an opportunity for the City to object, appeal, and have all appeals concluded.

Access to CI investigation reports are subject to state and federal laws and the applicable rules of evidence and procedure and are never available until after the conclusion of the investigation without a proper court order.

Subjects of Reports of Investigation for CI Cases will be given an Investigative Summary (See Attachment 6Aiii) if the allegation(s) is/are SUBSTANTIATED. The Investigative Summary will be provided to the subject by the individual's department head. Legal cases do not contain an Investigative Summary and are subject to attorney-client work rules.

Employees may request a copy of their case Report of Investigation or legal case from the City Legal Department. A case review log for employee request will be maintained by the City Legal Department. All other requests for copies of the ROI must be submitted by a Request for Public Records to the Office of the City Clerk, Records Management Service. The Request for Public Records will be documented in the Clerk's office and then forwarded to the City Legal Department. The City Legal Department will be responsible for obtaining the records for review and release subject to state and federal laws and/or attorney-client work rules.

All requests for statistical records from the Office of City Investigations are judged on the scientific merit, methodology, data security procedures, benefit to the City of Montgomery, Alabama and the public. Statistical record review will be completed within 30 days, and the applicant will be notified in writing of the decision regarding the release of data.

Records duplication of CI case documents are subject to the same fees as set forth by the Records Management Service, Office of the City Clerk for the City of Montgomery.

1.D15 DOCUMENT RELEASE PROCEDURES

Every document that is to be released will be reviewed by the Legal Department and may be excised/redacted prior to being released. The information that should be redacted includes, but is not limited to, the following:

1. Undercover officers' names

2. Home addresses of officers and their families

3. Spouse's place of employment

4. Children's schools

5. Investigative techniques

6. Witness or informants' names

7. Active criminal information

8. Criminal intelligence or investigative information

9. Information received by a City, County, or State criminal justice agency from an outside state or federal agency on a confidential basis

10. Attorney work product or any material or notes which are confidential under the attorney/client privilege or any other applicable rule, regulation, or law.

The City legal department will be responsible for making a copy of the document, striking (redacting) the confidential material from the document, recopying the excised copy, and again striking the material that is restricted. The document will then be routed to the City Investigations for approval.

SECTION 1E – TRAINING REQUIREMENTS

1.E1 CI TRAINING

The Office of City Investigations will be responsible to train acting, subordinate, or CI administrative support personnel and investigation officers (IOs) to conduct investigations, provide assistance, process complaints, and resolve disputes as appropriate for the City of Montgomery.

Newly hired investigators and CI staff members must successfully complete a CI Orientation/Training Course after initial employment. This will include on-the-job

instruction and supervision. Training will be coordinated through the Director of CI or his/her designee(s). In addition, CI investigating officers will be scheduled for and attend investigative training programs available commercially or through college/university courses. Training will not be considered complete until both requirements stated above have been completed.

All CI staff members designated to receive complaints or conduct investigations will be thoroughly familiar with this handbook.

SECTION 1F – EDUCATION OF CITY PERSONNEL

1.F1 EDUCATING PERSONNEL ON THE CITY INVESTIGATIONS PROCESS

Supervisory personnel at every level are responsible for ensuring employees are aware of and understand their rights and responsibilities regarding the CI Complaints Resolution and Investigation Process contained in this directive.

CI should actively publicize the CI Complaints Resolution and Investigation Program and train personnel by taking the following actions:

- Publicize the CI Program through the City website, bulletins, newspapers, orientations, leadership schools, staff meetings, and by visiting work areas.

- Distribute CI Complaints Resolution information (posters, flyers, etc.) in work areas (for maximum exposure), reflecting the CI's name, location, and phone number. The purpose of these posters is to assist personnel in contacting CI.

- Ensure all personnel are aware of how to use the CI system and are aware of the City's policies on wrongdoing, reprisal, retaliation, and discrimination.

- Locally disseminate CI-related news, innovative ideas, and lessons learned.

- Educate staff as requested or as needed on their reporting responsibilities regarding allegations against any City employee. They should also be educated on their responsibility to provide documentation and evidence, in addition to interviews, as requested.

- Educate department heads, staff, and supervisors concerning the rights of employees to make protected communications to CI without reprisal, retaliation, or the need to follow the supervisory chain-of-command in order to report a complaint.

- Provide City public information officials with updates or any changes to CI policy/procedure in an effort to prevent misunderstanding and complaints.

SECTION 1G – ADMINISTRATIVE MAINTENANCE OF CI RECORDS

1.G1 MARKING CI RECORDS

All reports and documentation shall be appropriately marked with markings such as private, attorney-client privileged and/or attorney work product, confidential, FOUO, etc.

CI reports and records will be marked for official use only (FOUO).

Mark or stamp reports on the outside of the front cover (if any) or at the bottom of the first page above the "FOUO" marking with all or part of the following disclaimer, as appropriate:

This is a protected document. Unless otherwise indicated, the information contained in this report is confidential. It will not be released, reproduced, or given additional dissemination, in whole or in part, without permission from the Director, Office of City Investigations and/or the City Legal Department.

If the reader of this report is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that dissemination, distribution, or copying of this report is strictly prohibited and may result in severe penalties up to and including termination.

If you have received this report in error, please immediately return it to the Office of City Investigations.

Mark all copies of the ROI and other responses "FOUO".

Mark all documents provided by the complainant as "COMPLAINANT PROVIDED" in the lower right-hand corner of each page.

1.G2 PROTECTION OF CI RECORDS

CI Reports of Investigation are protected documents. Only the CI Director and/or Legal Department representatives can approve release of CI documents outside of CI channels.

CI ROIs should not normally be disclosed to individuals outside of the supervisory chain-of-command. Normally, they should only be disclosed inside of the chain-of-command to those requiring access to the records in the performance of their official duties.

Letters that transmit (or cover) CI reports and records (FOUO material) must call attention to the FOUO attachments. In these cases, use the following statement as a separate paragraph: "This letter does not contain 'FOR OFFICIAL USE ONLY' information; however, the attached documents are marked 'FOR OFFICIAL USE ONLY' and contain protected information."

Onsite records are stored both digitally and hard copy. Hard copy records will be maintained for one (1) year onsite before transfer to the records warehouse. The release of any data record will only be to the Director of City Investigations and at the direction of the Director and the records management clerk assigned as the Administrative Assistant of the Office of City Investigations.

Digital records will be maintained on the City assigned "S" drive system. Each year, the Director of City Investigations will assess the storage capacity of the share drive system and/or request additional space for historical data and data retrieval.

1.G3 PROTECTING PRIVACY INTERESTS

Prior to case closure, investigating officers conducting CI investigations **will not** provide witnesses, subjects, or other third parties with copies of complaints, investigative reports, or documents; nor will they allow those parties to read any complaint filed through CI channels.

A complaint to CI, or a complaint being worked in CI channels, is protected information.

Prior to being interviewed, subjects must be advised of the specific nature of the allegations against them to permit them to properly respond to or defend against such allegations. A standard read-in form will be read to each subject or witness.

Witnesses need only be sufficiently advised of the matters under investigation to permit them to respond to the questions asked and to provide other relevant information.

When necessary and appropriate, the complainant should be told that the IO must be able to discuss the case with appropriate officials and witnesses to resolve the complaint.

Generally, do not release the complaint, materials, or information provided by the complainant, or the response to the complainant to a third party requester or the subject, without the complainant's written consent.

Protect the privacy interests of others involved by complying with the established guidelines.

When a CI investigation is halted because it is determined another investigation is warranted, guard the protected nature of the CI records involved.

Originals and copies of CI records such as the complaint, report, witness testimony, etc., may not be used as the basis of a subsequent investigative effort outside CI channels without a proper court order or by agreement with the City Legal Department.

Prepare a summary of the case, which may include a list of witnesses and documents from other systems of records or other relevant information. This is to guard CI records from inadvertent disclosure and waiver of their protected nature.

SECTION 1H – RESPONSIBILITIES OF THE CITY LEGAL DEPARTMENT

When necessary, the City Legal Department will:

1. Assist CI in analyzing complaints and claims to identify allegations of wrongdoing
2. Provide advice on framing or re-framing allegations prior to investigation
3. Provide advice and assistance to the CI Director and/or IOs during an investigation
4. Provide a legal review of the ROI in accordance with this instruction
5. Provide comments or present recommendations to improve the ROI
6. Advise CI on the disposition of materials gathered during the investigation, such as recording tapes, CDs, written memos, etc.

7. Advise CI on the release requirements of completed Reports of Investigation

SECTION 1I – POLICY ON POLICE AND FIRE DEPARTMENT UNIQUE INVESTIGATIONS

Daily Police and Fire Department activities may result in allegations of wrongdoing or rule breaking not normally occurring in other City of Montgomery departments. The following investigations require unique procedures and coordination:

1.I1 POLICE DISCHARGE OF A FIREARM OR SHOOTING, DEATH IN CUSTODY, K-9 BITE RESULTING IN NEAR DEATH, OR ANY SERIOUS CRITICAL INCIDENT

Anytime a firearm is discharged by a police officer in the line of duty that causes physical injury or death to another person or to the police officer, or whenever a death occurs while a person is "in custody," an investigation shall be completed by the Alabama State Bureau of Investigation (SBI) or other appropriate law enforcement agency. Any time the Alabama State Bureau of Investigation (ALEA) is called for an investigation, City Investigations will be called to respond to the scene.

CI will also investigate the incident to determine what, if any, administrative rules, policies, or procedures may have been violated.

Normally, when a criminal investigation is required, SBI or other appropriate law enforcement agencies will complete their investigation before CI begins its investigation.

Investigations by SBI and CI may also be conducted in parallel. However, CI will immediately suspend its parallel investigation when requested to do so by investigating law enforcement agencies. In those cases CI will resume investigation when cleared to do so by law enforcement.

CI will not make public/media statements regarding any investigation, especially investigations conducted in parallel with law enforcement, unless specifically cleared by the City Legal Department and the CI Director. Public/media comments regarding any on-going parallel investigation may jeopardize the criminal investigation being conducted by law enforcement and/or adversely affect legal processes related to the case.

In order to prevent interference with SBI or the police crime scene investigation, the following policy applies to CI if CI goes to the scene: After notice of the incident has been received, the CI Director will be informed whenever there is a Montgomery Police Department shooting, discharge of a weapon, or death while in custody.

SBI normally assumes control of all crime scenes involving police shootings. The purpose is to provide on-scene observation of the situation on behalf of the Mayor. CI does not represent the City Legal Department and will not provide on-scene legal advice.

While on the scene, CI will not: (1) interview the police officer(s) involved, (2) interview witnesses, (3) enter the specific crime scene, interfere with or contaminate the crime scene in any way, (4) touch, handle, or manipulate any potential evidence to be gathered, or (5) make any public statements regarding the crime scene or the investigation.

When tasked to visit a crime scene, CI may (on a non-interference basis) converse and/or coordinate with SBI and Montgomery Police Department representatives.

CI will coordinate and advise the City Attorney regarding any immediate or potential follow-up legal activities required by the City.

Once SBI has finished with its crime scene activities, CI may be escorted to the crime scene by an MPD representative to gather information needed to begin their investigation, but will not interfere in any way with the SBI or Montgomery Police Department's investigations.

In no case will the subject(s) of an investigation be interviewed sooner than 48 hours after the alleged event. In addition, when investigations are being conducted in parallel with law enforcement, the subject(s) will only be interviewed after SBI or appropriate law enforcement has completed their investigation requirements. When necessary, City Investigations will coordinate with the City Legal Department and/or the appropriate law enforcement agency prior to conducting interviews.

In order to determine if policy or procedures have been violated, police officers who have discharged weapons must comply with applicable MPD directives and should not be released to return to regularly assigned duty until CI has completed its interviews. The Chief of Police will determine when an officer will return to regularly assigned duties. If circumstances require an extensive delay (for this instruction this means greater than 14 working days) before a CI interview can be

completed, the CI Director will coordinate with the Chief of Police and/or City Legal Department.

1.I2 FIRE DEPARTMENT DISCHARGE OF A FIRE ARM OR SHOOTING

Certain members of the Montgomery Fire Department are authorized to carry weapons in the line of duty. Anytime a weapon is discharged or shooting occurs, the investigations will be the same as the Police Department, as described in Paragraph 1.I1 above.

1.I3 ACCIDENTAL DEATH OCCURRING DURING FIRE OR RESCUE OPERATIONS

CI will not normally be dispatched to observe Montgomery Fire Department fire scenes or medical calls. The CI Director will be informed anytime the Fire Department is accused of wrongdoing resulting in accidental death that occurred during fire suppression or during medical rescue activities. Though these situations are investigated by the SBI, CI may be required to conduct a parallel investigation if the death concerns possible violations of administrative rules, policies, or procedures. CI will coordinate with the Fire Chief, City Legal Department, and/or the appropriate law enforcement agency as stated in paragraph 1.I.1 above.

In addition, the Fire Chief may request a CI investigation any time the Chief believes it is needed or is appropriate.

1.I4 TASER DISCHARGE AND BI-ANNUAL CHECKS

It will be the responsibility of Director of City Investigations to conduct random inspections of departmental-owned TASER units. Inspection will include the download of records contained in a TASER memory and the comparison of the downloaded information to past deployments. A report of the information will be sent to the Chief of Police on an annual basis.

SECTION IJ – REQUIREMENT TO DISARM BEFORE INTERVIEWS

Any Police or Fire Department individual who is the subject of an investigation will be required to disarm before any interview takes place. Firearms will be secured in the CI office using the firearm lockboxes provided or may be secured by other means prior to entering the City Investigations offices.

Except for sworn law enforcement officers, firearms are not permitted in the CI office complex. Citizen witnesses will not be armed during interviews conducted in the CI offices.

SECTION 1K – BODY CAMERAS AND RECORDING DEVICES

Body cameras and all individual recording devices (including cell phones, tape recorders, etc.) will be removed and/or turned off prior to any CI interview. These items may be secured in the lock boxes located in the CI office or secured by other means. During any CI interview, the only video and audio recording of the interview will be accomplished by the CI Investigator.

Note: The IO should check to see if any individual being interviewed has a "Smart watch." This can be used as a recording device, and the IO will be required to have the interviewee remove the watch to the safe.

Chapter 2

Filing a CI Complaint

2.1 OVERVIEW

This chapter explains the policy and procedures to be used when filing a complaint against the City of Montgomery, or an accusation of wrongdoing against any City employee. Department heads and supervisors should use this chapter to advise employees regarding the CI's Complaints and Investigations Program. City employees should read this chapter before filing a complaint with CI.

City employees have the right to contact CI at any time to report suspected wrongdoing. No one may restrict an employee from contacting CI or reporting wrongdoing to a supervisor or more senior official.

City employees have a duty to promptly report gross mismanagement; violations of law, policies, procedures, or regulations; any injustice; abuse of authority; inappropriate conduct; or misconduct (as defined by this instruction); and a deficiency or like condition through appropriate supervisory channels, through a CI complaint or through an established grievance channel.

All employees shall promptly advise MPD of suspected criminal activity or fraud. CI will coordinate with the City Legal Department and/or law enforcement as necessary. If required, law enforcement and CI investigations may be conducted in parallel.

Complainants should attempt to resolve personnel complaints at the lowest possible level using supervisory channels before addressing them to a higher-level or CI.

The lowest level supervisor can often resolve complaints more quickly and effectively than a higher-level supervisor not familiar with the situation or the people involved.

The CI system should be used when there is fear of reprisal or when the employee believes a referral through supervisory channels would be futile.

When complaints are addressed to a higher level (Mayor, Cabinet member, etc.), the CI Department will determine the appropriate level or organization for investigation.

The complaint may be referred to the complainant's department head for an attempt at resolution before a CI investigation will be initiated.

Any case referred by CI back to a department shall be tracked until completed. The department shall report their findings/actions to CI as soon as practicable.

2.2 COMPLAINTS NOT APPROPRIATE FOR THE CI SYSTEM

The CI Complaints Resolution Program may not be used for matters normally addressed through other established grievance or appeal channels unless there is evidence that those channels mishandled the matter or process.

This policy does not prevent an employee from exercising rights of review and appeal as provided by personnel law and rules.

If a policy directive or instruction provides a specific means of redress or appeal of a grievance, complainants should exhaust those procedures before filing a CI complaint.

Complainants must provide relevant evidence that the process was mishandled or handled prejudicially before CI will process a complaint of mishandling.

Mere dissatisfaction or disagreement with the outcome or findings of an alternative grievance or appeal process is not a sufficient basis to warrant CI investigation.

2.3 COMPLAINTS OF A MINOR NATURE NOT INVESTIGATED BY CI

In general, minor rules violations or minor infractions or deviations in work practices that will not result in a suspension or termination will not be investigated by CI. For example: parking violations, rudeness (in person or on the telephone), littering, etc. These types of complaints should be handled by the employee's supervisor and/or chain-of-command.

When a complainant makes an allegation to CI that involves a minor violation or infraction, the CI Director will contact the employee's department head or supervisor and relay the complaint to them for action. The employee's department head and/or supervisor will document any action (i.e. verbal or written counseling, etc.) and provide a letter back to CI (within 30 days) regarding any action (or no action) taken.

SECTION 2A – COMPLAINANT'S RIGHTS AND RESPONSIBILITIES

2.A1 COMPLAINANT'S RIGHTS

Complainants have the right to:

1. File a CI complaint at any level without going through their supervisory chain

2. File a complaint with CI without fear of reprisal

3. Request withdrawal of their CI complaint; however, the request for withdrawal must be in writing. Only the CI Director and/or Mayor will approve withdrawal of a complaint after it has been submitted to CI.

Complainants may submit complaints anonymously. Anonymous complainants obviously will not receive a response.

Any individual can submit a complaint if they reasonably believe inappropriate conduct has occurred or a violation of law, policy, procedure, or regulation has been committed, even if the complainant is not the wronged party or was not affected by the alleged violation. Individuals may also submit a complaint on behalf of another individual (third party).

Citizens may file complaints against the City or any City employee for alleged rules violations.

Third-party complainants are not entitled to a response regarding the substance of alleged wrongs not directly affecting them. Third-party complainants are entitled to have receipt of their complaint acknowledged.

Completed Reports of Investigation (CI cases and Legal cases) are not to be copied or provided to complainants or subjects. After the appropriate administrative action has been completed, all reports will be returned and will remain on file with CI and/or the City Legal Department. They will not be filed or included with any other department or personnel records.

Employees may request a copy of their case file from the City Legal Department. A case review log for employee request will be maintained by the City Legal Department. All other requests for copies of the ROI or case file must be submitted by a Request for Public Records to the Office of the City Clerk, Records

Management Service. The Request for Public Records will be documented in the Clerk's office and then forwarded to the City Legal Department. The City Legal Department will be responsible for obtaining the records for review and release subject to state and federal laws

Complainants will not be reprised against for making or planning to make a protected communication (complaint) to CI, a supervisor, or senior official. (See Chapter 3 for investigation procedures regarding protected communications and reprisal.)

2.A2 COMPLAINANT'S RESPONSIBILITIES

Complainants must submit CI complaints within sixty (60) days of the alleged wrongdoing or discovery of the alleged violation.

CI complaints not reported within sixty (60) days will normally be dismissed unless the complainant is able to demonstrate he/she was unable to meet the time requirements due to unforeseen or extraordinary circumstances and such circumstances justify the delay. The final decision to investigate a complaint older than 60 days rests with the CI Director, unless the investigation is specifically directed by the Mayor or the City Legal Department.

CI complaints not reported within sixty (60) days may seriously impede the gathering of evidence and testimony. The CI Director may dismiss a complaint if given the nature of the alleged infraction and the passage of time, there is reasonable probability that insufficient information can be gathered to make a determination. Unless approved by the CI Director, requests for investigations will not be conducted if not reported within six months of an alleged incident or wrongdoing.

NOTE: There may be other situations to modify these time constraints.

Complainants must cooperate with investigators by providing factual and relevant information regarding the issues and/or allegations. Complainants will sign the Witness Acknowledgment Form (Attachment 4A) prior to any interview.

If complainants do not cooperate, the CI Director may dismiss the complaint if the lack of information leaves CI unable to conduct a thorough complaint analysis.

Note: Employees must sign a "Garrity" oath/form (Attachment 4C) and Witness Acknowledgment Form (Attachment 4B) prior to the CI interview.

Complainants providing information to the CI Department must understand they are submitting official statements within official City channels. Therefore, they remain subject to punitive action (or adverse administrative action) for knowingly making false statements and for submitting other unlawful communications.

Other than the City Legal Department, no person, including supervisors and/or department heads, may request information regarding the substance or other matters discussed or presented during a CI interview. Persons interviewed by CI shall immediately report any such inquiry to CI, and disciplinary action may be recommended by CI to the Mayor and/or Cabinet member against the person inquiring about the interview.

SECTION 2B – HOW TO FILE A CI COMPLAINT

To make a complaint or allegation of misconduct you may:

Report the incident by accessing and submitting the complaint form online at www.montgomeryal.gov . You may also visit the CI office to complete the complaint form in person. Complainants will be required to fill out the CI standard complaint form (See Attachment 1).

To report an incident in person to the CI Department, the office address is: 300 Water Street, Suite 214, Montgomery, AL. 36104.

NOTE: UNLESS THE COMPLAINTANT WISHES TO REMAIN ANONYMOUS, THE COMPLAINANT MUST GIVE INFORMATION SUFFICIENT TO IDENTIFY HIM/HER ALONG WITH CONTACT INFORMATION INCLUDING TELEPHONE NUMBER AND ADDRESS.

Employees and citizens may complain anonymously. CI will accept verbal or written complaints from individuals who wish to remain anonymous. The CI Director and/or investigating officer will determine if sufficient information can be obtained to process the complaint. In addition, the case could be weakened if the person does not wish to appear at any follow-up hearings that may be initiated after an investigation is completed.

Employees may report wrongdoing or complain to a supervisor who may then direct the employee(s) to CI in accordance with the procedures described in this directive.

Complaints made to any department will be forwarded to the Office of City Investigations for further action.

Complainants will be contacted by CI as soon as possible after the complaint has been processed in accordance with this directive.

2.B1 WHEN TO FILE A COMPLAINT

Use these procedures when you have a complaint you reasonably believe is appropriate for CI resolution.

Complainants may file complaints anonymously or directly with CI. A complaint form must be completed and may be obtained in person from the Office of City Investigations or from the City of Montgomery webpage at www.cityinvestigations@montgomeryal.gov.

2.B2 EMPLOYEE ACTIONS

1. Determined if the complaint should be filed with CI by reviewing Section 2A of this chapter. Employees should determine: (1) you are unable to resolve your complaint using supervisory channels; and (2) you believe inappropriate conduct has occurred or a violation of law, policy, procedure, or regulation has been committed.

2. Complete the Complaint Form (Attachment 1).

3. Briefly outline the facts and relevant background information related to the issue or complaint.

4. Briefly list the allegations of wrongdoing in general terms and provide supporting narrative detail and documents later when interviewed. Allegations should be written as bullets and should answer the following:
   1. Who committed the alleged violation?
   2. What violation was allegedly committed?
   3. What law, regulation, procedure, or policy do you believe was violated?
   4. When did the alleged violation occur?

5. Submit the completed form to CI and schedule a follow-up interview with a CI investigator to discuss the complaint.

6. If employees of the CI Department are named in the complaint, the CI Director and Senior Staff Attorney (City Legal Department) will determine how the case will be investigated. In that case, the CI Director and/or the Mayor will authorize an independent investigation not conducted by CI personnel. Any person(s) appointed to conduct such an investigation will do so following the policy and procedures contained in this instruction handbook.

2.B3 AFTER THE COMPLAINT IS FILED

The complaint will be examined for completeness and, when possible, the Complaint Form will be notarized and accepted by CI as an official complaint. Normally, a City investigator will then be assigned to interview the complainant. Next, CI will perform a Complaint Analysis and Investigation Plan to determine the proper course for the investigation. Once an official allegation is approved by the CI Director, the investigation will begin after proper notifications have been completed.

The CI Director will sign a notification letter (Attachment 3A) to inform the applicable Cabinet Member and/or the City Legal Department of the allegation(s) and when the investigation will begin. In addition, a CI Investigator will be appointed in writing by the CI Director (Attachment 2). The CI Investigator will schedule the interviews for the assigned case, in accordance with the required timelines (See Paragraph 3.A4).

NOTE: During the investigation, all information will remain CONFIDENTIAL.

CI investigators will "swear in" those who are interviewed and record all interviews. Individuals being interviewed will not be allowed to record their own interview, or discuss their interview with anyone.

NOTE: (1) A "subject" is an individual against whom allegations of a non-criminal wrongdoing have been made and the individual who is the focus of an investigation. Unless specifically approved by the CI Director, a subject will not be allowed to have an attorney present during the interview. If an attorney is present, the attorney will be allowed to only monitor the interview and will not answer questions for or advise the subject being questioned. (2) A "suspect" is an individual suspected of a criminal offense. Suspects would be allowed to have an attorney present during an interview. (3) A "witness" is any individual who is interviewed during the course of an investigation and the same rules regarding "subjects" apply. CI investigators will consult with the City Legal Department if there is any question regarding the status of an individual being interviewed.

WARNING: Employees who divulge the contents of an interview, discuss case investigation information outside CI channels, interfere with the investigation, or fail to tell the truth will be subject to severe consequences, up to and including, termination of employment. These violations will be reported to the employee's department head for appropriate disciplinary action in accordance with the City's Progressive Discipline Policy.

Unless the individual is a "suspect" of criminal activity, an attorney representing a witness will not be allowed in the room during the interview. The CI Director may authorize an attorney to attend a witness interview, but the attorney may only monitor the interview and will not answer for or advise the witness. Interviews will normally take place in CI office spaces, not the individual's work environment. The CI Director must approve interviews elsewhere.

Initially, the complainant will be interviewed followed by witnesses. The individual(s) named in the allegation will normally be interviewed last.

CI will attempt to complete the investigation within forty five (45) business days. When the investigation is complete, the Report of Investigation will be shared with the employee's department head, supervisor and/or the City Legal Department for follow-up disciplinary or legal action.

The complainant will receive feedback in the form of a letter or e-mail from the CI Director (Attachment 8) confirming the investigation is complete. The Report of Investigation will remain **CONFIDENTIAL, For Official Use Only**. See paragraph 1.D.12 for disposition of reports. Complainants, witnesses, and subjects of an investigation are not authorized to read or receive the Report of Investigation.

2.B4 PROCEDURES FOR SCHEDULING CITY EMPLOYEE INTERVIEWS

The CI Investigator assigned to the case is responsible for scheduling interviews. Normally, the complainant will be interviewed first, any witnesses will be interviewed next, and the subject will be interviewed last.

Cabinet members will first receive an official letter from the CI Director naming the subject(s) to be investigated and witnesses to be interviewed. (See Attachment 3.) Normally, City employees will not be interviewed before the CI Director's notification letter is delivered to the department head. Any City employee who is named as a witness or subject in the case will be scheduled for an interview through

their supervisor. CI will attempt to minimize disruption to an individual's work schedule. If required, CI may directly schedule any employee without coordination with the employee's supervisor in accordance with paragraph 1.D1 of this handbook.

2.B4A EMPLOYEES REFUSING TO INTERVIEW

Because City Investigations conducts administrative and not criminal investigations, City employees may not refuse to be interviewed. City employees will comply with all interview requests from CI. Any City employee who refuses to be interviewed or intentionally provides false information will be subject to dismissal. All employees interviewed will sign the Witness Acknowledgement Form (See Attachment 4B) and the Garrity Oath Form (See Attachment 4C).

2.B4B EMPLOYEES RIGHT TO REQUEST A CHANGE OF INVESTIGATOR

Employees have the right to a fair and unbiased investigation of any allegation. A City employee may request a change of the assigned case investigator if the employee believes a previous working relationship or previous contact with the investigator may affect the investigator's objectivity. In all cases, any change of an assigned investigator must be approved by the CI Director.

2.B5 PROCEDURES FOR SCHEDULING CITIZEN INTERVIEWS

Citizens who are not employees of the City of Montgomery cannot be required to testify. Non-employee citizens who are called for an interview will be informed their cooperation is voluntary, and they cannot be subpoenaed to testify.

The CI Investigator will first attempt to contact individuals by: (1) telephone, (2) e-mail, (3) U.S. mail, or (4) U.S. registered mail, if necessary. If no response or contact is received after ten (10) calendar days from the postmark, the individual will be eliminated as a witness.

Citizens who file claims against the City will be scheduled in accordance with paragraph 2B.5. If the claimant is represented by an attorney, the interview will normally be scheduled through that attorney. The interview may take place in the attorney's office. All claims against the City are investigated on behalf of the City Legal Department.

Chapter 3

Managing and Processing Complaints and Investigations

SECTION 3A – OVERVIEW

This chapter instructs City investigators how to manage and process CI complaints and investigations and discusses the complaint/investigation lifecycle from receipt through the completed Report of Investigation. The City endorses a proactive oversight and follow-up system that achieves fair and efficient resolution of complaints.

SECTION 3.A1 KEY TERMS

This section uses the following key terms: Allegation, complainant, complaint, complaint analysis, complaint resolution process, contact, confidentiality, thoroughness, and timeliness. Refer to Chapter 4 for the definition of these key terms.

3.A2 PROTECTION OF INFORMATION

A key goal of the CI Complaints Program is to facilitate a complaint's resolution environment that promotes confidence in City leadership. Assurances that an individual's privacy will be safeguarded to the maximum extent practicable encourages voluntary cooperation and promotes a climate of openness in identifying issues requiring leadership intervention.

Specifically, CI has the responsibility to safeguard the personal identity and complaints of individuals seeking assistance or participating in any CI process such as an investigation.

Communications made to CI are privileged or confidential and may fall under the attorney-client privilege. (See Chapter 1.)

Some employees may believe they are automatically represented by the City Legal Department during a CI interview. **This is incorrect.** When interviewing employees, CI investigators must make it clear that the City Attorney's office does not represent them.

Persons who request anonymity or who express a concern about confidentiality will be informed of this policy. All personnel reviewing or processing CI information shall be briefed on this policy. All CI investigators and staff members are obligated to protect CI information when their tenure of service as a CI employee is completed. Failure to do so may result in termination of employment for the first offense.

The following guidance applies to all City employees and personnel at all organizational levels:

All personnel must protect the identity of complainants as described above. If a complaint is more appropriate for other supervisory or personnel channels it may be referred to them for action. In those cases, CI will advise the complainant of the referral.

CI may release the name of a complainant only on an official need-to-know basis. Normally, investigating officers will not divulge a complainant's name to a subject or to any witness or permit a witness to read the complaint without the CI Director's approval.

3.A3 POLICY ON MANAGING CI COMPLAINTS

CI complaints will be proactively managed in a manner that facilitates efficient and effective accomplishment. CI complaints will be reported and resolved with due diligence, thoroughness, and in a timely manner. Investigation officers must document all complaints and adhere to the process timeline described in the following section.

3.A4 THE COMPLAINT RESOLUTION AND INVESTIGATIONS PROCESS

To assist CI in managing complaints, the following tables describe actions required to resolve a complaint case from receipt through investigation to closure. The process is divided into three phases: complaint analysis, investigation, and quality review.

All complaints that result in an investigation should be conducted in a manner that balances timeliness and quality of the investigation. The goal is for ninety-five (95) percent of all cases that lead to investigation to be resolved according to the guidelines described below. Note: "Days" refers to normal "working days" or "business days," not consecutive calendar days, based on when the investigation begins, not when it is assigned to the investigator.

COMPLAINT ANALYSIS:	<2 DAYS
DIRECTOR REVIEW COMPLAINT ANALYSIS:	<2 DAYS
INVESTIGATION:	<36 DAYS
REPORT WRITING:	<5 DAYS
CI DIRECTOR'S REVIEW:	<4 DAYS
LEGAL REVIEW:	<1 DAYS
TOTAL PROCESSING TIME:	<40 DAYS

DEPARTMENTAL ACTION AFTER TRANSMISSION OF REPORT BY CI:

REVIEW OF COMPLAINT:	<5 DAYS

The assigned investigator will submit an extension letter to the CI Director anytime an investigation exceeds the timeline (50 total working days) specified above. (See Attachment 5H.)

3.A5 IF DISCIPLINARY ACTION IS TAKEN

(FROM DATE OF TRANSMISSION OF REPORT):

CHARGES FILED:	<5 DAYS
DEPARTMENTAL HEARING:	<5 DAYS
REPORT MADE TO MAYOR AND CI:	<5 DAYS
MAYORAL ADMINISTRATIVE APPEAL:	<10 DAYS
DECISION:	<5 DAYS
TOTAL DISCIPLINARY TIME AFTER REVIEW OF COMPLAINT:	<30 DAYS

3.A6 CLASSIFICATION OF CASES AND CASE NUMBERING

This section defines and describes the various types of cases handled by the Office of City Investigations and provides for an indexing, numbering, and filing system for each.

3.A6.1 CASE DEFINITIONS

I. CITY INVESTIGATION CASES (CI Cases)

A CI investigation is initiated upon receipt of an allegation of misconduct where the misconduct is of a serious nature requiring a detailed investigation or to protect the interests of the City and to ensure compliance with rules and regulations. Any CI case can be initiated by the mayor, CI Director, department head, supervisor, employee, or citizen.

NUMBERING OF CASES

Each case will receive a unique file number. Cases will be numbered consecutively beginning with the first case received each calendar year and continuing through the last case of each calendar year. Each case will begin with a 2-digit number representing the year. Next will be letters "CI" then the case number. (Example: 07-CI-014 would be the fourteenth CI investigation case investigated in 2007.)

Electronic Computer Indexing and Filing:

After a CI case has been concluded with the City Legal Department, the completed file will be given to the CI Administrative Assistant who will enter the names of all parties involved with provided computer software currently being used by CI.

Completed cases will then be filed in numerical order, by year.

II. LEGAL CASES (LD Cases)

A Legal Investigation will be initiated upon request from the City Attorney to the CI Director following receipt of an allegation of misconduct where the misconduct may lead to a lawsuit or anticipation of litigation. These cases will be assigned/directed using attorney-client work privilege.

CI will inform the appropriate department, via memorandum, of the allegation of misconduct.

Upon receipt of such information, a case file will be established which will contain all pertinent information of the action and any requirements for information.

Cases will be numbered consecutively, as with the CI cases, except there will be the letters "LD" in place of the letters "CI" (Example: 10-LD-001). Legal cases will be designated as such in numerical order.

Claim cases are defined as those claims filed against the City through the City Clerk's office and will be numbered by the City Clerk's Office.

Legal Reports of Investigation will be completed using the Attachment 6Bi format. Reports shall be addressed to the City Legal Department. Completed cases will

be given to the CI Administrative Assistant who will enter the names of all parties into the data file and file the cases consecutively, by number, for each calendar year.

III. DEPARTMENTAL TRANSFER CASES (Numbered as CI Cases)

These cases include allegations of misconduct on the part of an employee where the misconduct is of a minor nature. Departmental investigation cases usually result in corrective counseling or remedial training rather than more formal disciplinary actions. Examples of misconduct complaints usually included in this category are rudeness, discourtesy, or improper procedure. These types of cases will usually be returned to the individual's City department for supervisor investigation/action.

Departmental investigations will be conducted in accordance with applicable personnel policies and procedures.

Occasionally, a departmental investigation case will result in a supervisory action which requires a CI case analysis. A transferred case will be logged and the original informal case file will be maintained and cross-referenced with the original CI case.

Each case will begin with a 2-digit number representing the year and logged as a CI Case.

Completed departmental level cases will be given to the Administrative Assistant for entry into computer files.

The names of complainants will be indexed in departmental investigation cases.

Departmental investigation cases will be filed in numerical order for each calendar year.

IV. INFORMATION ONLY

Definition: Information Only are those contacts with the public where a question is asked concerning conduct or procedures, or a perceived complaint is made which is actually a procedural question and does not fall into one of the above categories.

A brief synopsis of the information concerning the information only data can be entered into the computer.

Information only cases will be numbered the same as with other CI Investigation Cases previously described except the letter "I" will be used. (Example: 07-I-014)

"Information Only" will be entered in the data file for each employee involved for training and statistical purposes.

V. CLAIMS CASES

Claims cases are received by the City Clerk's Office, transferred to the City Legal Department, and then are assigned to be investigated by City Investigations. The claim case number is provided by the City Clerk's Office. When claim investigations are completed, they are sent to the City Legal Department for processing. City Investigations will file completed (investigated) claims electronically by the assigned claim case number and the individual's name who filed the claim.

If during the investigation of a claim, the CI Investigator determines a violation of policy, directive, or procedure may have occurred, the CI Director and/or Senior Staff Attorney will be notified. The Director or Senior Staff Attorney will then verbally notify the applicable department head who will determine if any additional investigation is warranted.

3.A7 POLICY FOR COMPLAINT ANALYSIS AND INVESTIGATION PLAN

In each case, IOs will conduct a thorough complaint analysis to determine the appropriate complaint resolution strategy. A complaint analysis is always required and results in a dismissal, referral/transfer, investigation, or assistance. Complaints containing multiple assertions may require multiple resolution strategies.

3.A8 CONDUCTING A COMPLAINT ANALYSIS AND INVESTIGATION PLAN

A complaint analysis is a preliminary review of assertions and evidence to determine the potential validity and relevance of the issues to the City and to determine what action, if any, is necessary within CI, supervisory, or other channels.

During the complaint analysis, the IO will use the complainant's information to: (1) determine if the complaint is valid, (2) form the allegation(s), and (3) determine which rules, regulations, laws, or policy may have been violated.

A complaint analysis and investigation plan is always required and guides the IO in developing a complaint resolution strategy. A Complaint Analysis and Investigation Plan will always result in one of the following course of actions: referral, investigation, Unfounded, Closure, Transfer, or assistance to the complainant. The IO will present the complaint analysis to the CI Director for approval. (See Attachment 2.)

The **single most important factor** in analyzing a complaint is to *clearly and concisely identify the complainant's assertions.* A properly framed allegation is a factual proposition to be proved or disproved during an investigation, and which, if true, would constitute wrongdoing. *If an allegation cannot be properly framed, an investigation is inappropriate.* Framed allegations must contain the following:

1. Who committed the alleged violation?
2. What violation was committed?
3. What law, regulation, procedure, standard, or policy may have been violated?
4. When did the alleged violation occur?

A properly framed allegation is constructed as follows:

Who (_____) improperly did what (_____) in violation of what standard (_____), and when (_____)?

NOTE: For each allegation, there may be multiple rules, laws, or policy violations that could result in additional allegations. Sometimes, a violation of one regulation would automatically mean that a violation of another regulation or policy occurred. It may not be necessary to add additional allegations if a substantiated allegation would be redundant with the others. In these situations, the CI Director will consult with the City Legal Department before approving the IO's complaint analysis and investigation plan.

3.A9 INITIAL IO ACTIONS

1. Log complaint into the CI database (CI Administrative Assistant will normally do this).

2. Mark any documents (such as the complaint form or other information) "COMPLAINANT PROVIDED" in the lower right-hand corner of each page.

3. Contact complainant in writing, by e-mail or telephone, or in person within two business days to acknowledge receipt (unless complaint is received directly from the complainant).

Do not combine allegations without CI Director's approval. If the complainant asserts multiple violations on different occasions, make each of these a separate

allegation. The same rule applies when the complaint contains multiple subjects, occurrences, or violations of standards.

If a complainant alleges a supervisor or senior official is guilty of reprisal, a complaint analysis into allegations of reprisal will be completed in accordance with the "acid test" question format. (See Section 3D.)

3.A10 REQUIREMENTS FOR INVESTIGATION PREPARATION

The CI Director will ensure IOs are trained before they begin an investigation by using this instruction and other resources. In addition, CI IOs will discuss any unique investigative requirements with the CI Director and Senior Staff Attorney.

IOs **must** meet with the CI Director and/or Senior Staff Attorney before initiating the investigation. The CI Director will assist the IO in framing the allegations, if necessary. This may also require coordination with the City Legal Department. The IO will complete an investigation plan and submit it to the CI Director for approval. (See Attachment 2.)

For each investigation, each IO will be given an official appointment letter from the CI Director that initiates the case. (See Attachment 2.)

IOs must review and/or refine all allegations and supporting documentation as part of their investigative preparation. All applicable regulations/directives/policy should be identified and reviewed at this time.

Based on the review of the allegations, supporting documentation, and applicable directives, the IO should complete a complaint analysis and investigation plan which will be discussed with the CI Director.

3.A11 CI DIRECTOR'S ROLE IN COMPLAINT ANALYSIS AND INVESTIGATION PLAN

The Director, Office of City Investigations, shall assist CI investigators by:

1. Analyzing complaints to identify/clarify allegations of wrongdoing
2. Assisting the IO in framing or re-framing allegations prior to investigation, if necessary
3. Approving the IO's complaint analysis and investigation plan
4. Providing advice and assistance to IOs during the course of investigations, as needed, but *not* investigate for the IO

After the case investigation is completed, the CI Director will assist IOs by providing a review and approval of CI Reports of Investigation to ensure the "Findings of Fact" are adequately supported by the preponderance of evidence obtained during the ROI process. The CI Director will then ensure a legal review and approval is completed by the City Legal Department (Senior Staff Attorney).

Note: Before any report is considered "final" a structural and organizational review of the case report and all case documents will be completed by the CI Administrative Assistant.

SECTION 3B – FACT FINDING

3.B1 KEY TERMS

This section uses the following key terms: Authentication, evidence, hand-off, investigation, preponderance of the evidence, statement, summarize testimony, suspect, subject, testimony, and witness. Refer to Chapter 4 for the definition of these key terms.

3.B2 POLICY ON INVESTIGATING COMPLAINTS

All CI investigations are conducted in accordance with Chapter 3 of this instruction and other applicable laws, regulations, directives, and policies concerning the specific allegations.

CI investigations are *administrative* in nature--they are **fact finding** rather than judicial proceedings. Although they may assess a subject's personal responsibility with respect to an alleged wrongdoing, CI investigations *do not* use the criminal standard in which proof "beyond a reasonable doubt" is required.

Rather, the standard of proof that applies is proof by a ***preponderance of the evidence.*** This is the yardstick the IO will use throughout the investigation to determine how much evidence is enough to support or refute the allegations in the case.

3.B2A PRIORITY OF CI INVESTIGATIONS

Complaints and investigations of wrongdoing will be completed in accordance with the instructions and report formats explained in this chapter and Chapter 5.

The CI investigation will determine if a rule, policy, procedure, or directive has been violated and will begin after approval of the CI Director. However, the CI investigation will remain *subordinate* to a related criminal investigation. Normally, the criminal investigation, completed by the MPD's Criminal Investigation Division (CID), Alabama State Bureau of Investigation (SBI), or other authority will be finished *before* beginning the CI investigation. Any exceptions to this policy will be coordinated by the CI Director with the City Legal Department.

Information uncovered by a criminal investigation, such as evidence, statements, records, etc., may be used and become part of a CI investigation. CI will coordinate with the Senior Staff Attorney and/or the City Legal Department before attempting to obtain any information used during a criminal investigation.

3.B2B CLAIMS AND COMPLAINTS

Claims against the City of Montgomery are filed with the City Clerk's Office and passed through the City Attorney's office to CI to investigate. Claims usually involve a citizen's direct request for monetary reimbursement by a request through an attorney or filed without the assistance of an attorney. In either case, the Senior Staff Attorney will receive the claim from the City Attorney's office, evaluate the claim and issues, answer any pre-investigation questions and coordinate with CI as necessary.

Note: Claims older than 6 (six) months will not be processed without just cause.

Interviews conducted to investigate claims may be conducted in the presence of the claimant's attorney. In some cases, the interview will be conducted in the claimant's attorney's office. However, the attorney will not answer questions for the claimant.

A claims report of investigation will be written in a narrative form and addressed to the City Attorney. (See Attachment 6Bii) The report will be given to the Senior Staff Attorney who will review it for legal sufficiency and will then write a brief cover letter for transmittal to the City Attorney. All reports will be personally delivered to the Legal Department by the Senior Staff Attorney.

3.B2C LEGAL INVESTIGATIONS

Legal Investigations are usually initiated in one of two ways. First is a direct request from the City Legal Department where a lawsuit has not yet been filed, but the City Attorney believes the investigation should be done *in anticipation* of legal action by

the complainant. Next is when a complaint investigation is already in progress and the City Legal Department receives notice the complainant may pursue legal action against the City, or the investigation is converted to a legal investigation based upon the recommendation of a representative of the Legal Department. Use Attachment 6Bii for the ROI legal format and cover sheet (Attachment 6Bi).

If a complainant's attorney refuses to allow CI to interview his/her client, CI will document this with an official response letter to that attorney. (See Attachment 5D.)

In either case, the Report of Investigation will be done in accordance with the instructions for legal reports contained in this chapter, except the ROI will be addressed to the City Attorney, not the department head. The City Attorney will be responsible to release the Report of Investigation to the department head. The CI Director will send a letter to the Cabinet member when the ROI has been completed and sent to the Legal Department. (See Attachment 7A.)

3.B2D LAWSUITS

In some cases, a complainant will file a lawsuit with the City Attorney's Office and not complain to City Investigations. **When a lawsuit is filed before a complaint is received, CI will *not* investigate the case**. The City Legal Department will be responsible for case disposition. Any information obtained by City Investigations will be forwarded to legal.

3.B3 CI DIRECTOR'S RESPONSIBILITIES DURING CASE INVESTIGATIONS

The Director is responsible for managing the investigative process. The CI Director must assist the IO in solving investigative challenges (i.e., coordinating with City supervisors, etc.) while managing the investigation's quality and schedule. It is the CI Director's responsibility to ensure the Report of Investigation is completed on time and meets qualitative and legal standards. Specifically, the CI Director:

- Is the mayor's designee and *appointing authority* for investigations on behalf of the mayor and will assign cases to ensure a workload balance among investigators

- Must provide the IO an Appointment Letter (Attachment 2) describing the scope of investigation, authorizing the collection of evidence, and setting the suspense date for completion

- Must assist the IO as required in the complaint analysis phase
- Ensure the IO is properly trained
- Assist in scheduling appointments with key supervisory and support staff, technical advisors, including the Legal Department, as necessary
- Ensure the IO has suitable workspace, computers, administrative support, and technical assistance, etc.
- Approve the IO's Complaint Analysis and Investigative Plan (Attachment 2), identifying key milestones, standards, witnesses, evidence, and other administrative requirements
- Assist in coordinating and/or facilitating evidence collection, if necessary
- Review the proposed witness questions and associated rights advisement, if necessary
- Remain "neutral" during the IO's investigation and not investigate for or assist the IO in any way that would jeopardize the objectivity of the investigation
- Provide the quality and legal review of the ROI when completed and sign the ROI indicating approval of the investigation
- Provide the approved ROI to department heads, City supervisors and/or the City Legal Department for action

3.B4 RESPONSIBILITIES OF CI-APPOINTED INVESTIGATING OFFICERS

The Investigating Officer:

- Will use this instruction for proper guidance on how to conduct an investigation
- Must acknowledge receipt of the appointment letter signed by the CI Director
- Must advise the CI Director immediately of any personal relationships or other factors that may affect his/her impartiality

- Must begin the investigation without any preconceived notions (IOs will never take sides with any party and must be impartial, unbiased, and objective.)

- Must investigate the complaint, **not** the complainant (Keep the investigation focused on the allegations in the complaint and not the person making the complaint.)

- Must interview the complainant **first** in order to re-clarify the allegations and obtain specific details to help with the investigation

- Must protect information in accordance with Chapter 1 of this instruction

- Must obtain the CI Director's written permission if they believe they must release the complainant's name to gain evidence or testimony

- Must report the results of the case only to the CI Director and/or City Legal Department

- **Must not** comment to any complainant, subject, or other witness regarding their opinions, findings, conclusions, or recommendations during or after completion of the investigation

- **Will not** provide copies of testimony to complainants, subjects, or witnesses (However, if a subject/witness requests case file information, refer them to the CI Director and/or the City Legal Department.)

- Will explain to subjects, complainants, and witnesses that every effort will be made to maintain confidentiality

- Should not take leave/vacations during an investigation, except in emergencies

- Should not be involved with activities that would interfere with the timely completion of the case

- Will consult with the CI Director and read this instruction and all applicable instructions and directives before beginning an investigation

- Will complete a Complaint Analysis and an Investigative Plan identifying key milestones, standards, witnesses, evidence, and administrative requirements and obtain the CI Director's approval (See Attachment 2.)

- **Will not** publically comment (using any media) on cases or release confidential information related to any CI case, Legal case, or Claim case without authorization from the CI Director and City Legal Department

3.B5 GATHERING EVIDENCE

Evidence is information that tends to prove or disprove the existence of a fact. Evidence comes in many forms. It can be written, verbal, electronically stored, direct or circumstantial, relevant or irrelevant, first-person or hearsay.

Documentary Evidence: Most evidence is written documentation. During the course of investigations, IOs normally collect copies of documents, records, and other physical evidence to aid them in their duties. Assuming it is authentic, documentary evidence gives the investigator a snapshot in time.

One way to further verify the authenticity of a document is to have it identified by its author, especially in the case of correspondence, personal notes, and computer records. This process is known as authentication and must be referenced in the final report if the document has been so verified.

Computer Records: Data contained on computer hard drives, local area networks, e-mail systems, disks, etc., are considered to be documentary in nature but pose special challenges in accessing. Obtaining access to this information must always be coordinated through the CI Director and/or the City Legal Department.

Testimony: The other major form of evidence is information presented by a live witness in the form of testimony. Normally, the bulk of evidence during an investigation is collected in this format and will be discussed separately in this section.

Hearsay: Hearsay is a statement heard and repeated by a third party as the truth. In other words, the third party is telling the IO that the content of the statement is true. Although IOs may consider evidence obtained as hearsay, whenever possible, an IO should always try to talk to the actual witness who made the statement, especially if they are reasonably available, and the statement is important.

3.B6 INTERVIEWING WITNESSES

The bulk of evidence collected during CI investigations will normally come from witness testimony. After properly framing the scope and purpose of the investigation, the next most important aspect is the preparation of intelligent, well-planned interrogatories. Effective, cogent interrogatories can only be accomplished through thorough preparation.

NOTE: Witness interviews will normally be conducted in the CI Office, not the individual's work area. The CI Director must approve any interviews not conducted in the CI office spaces.

A witness' status will determine how they will be interviewed. For example:

The complainant is a key witness who must be interviewed **first** to clarify allegations and focus the investigation.

The subject is equally important since he/she is the one against whom the allegations have been made. This person should normally be interviewed **last** and given an opportunity to respond to the specific allegations. Additionally, they should be given a reasonable opportunity to respond to significant adverse information that may come about subsequent to the subject's initial interview.

An expert witness is someone with special knowledge and expertise in a particular subject matter. They may be used as consultants for background information or as a regular witness during the investigation. Because of their special expertise, their testimony is normally given more weight than the testimony of non-experts in their area of specialty.

IOs should not allow the testimony of an expert witness to control their final findings; this remains the ultimate responsibility of the IO.

Character witnesses are people who can verify the reputation of a particular person for certain conduct or personality traits (e.g., honesty, violence, etc.).

Regardless of their status, all City employee witnesses interviewed during investigations **must** be sworn and read/sign their Garrity oath verbatim (Attachment 4C) and Witness Acknowledgment Form (Attachment 4B). Citizen witnesses will read/sign the Citizen Witness Acknowledgement Form (Attachment

4A). This puts witnesses on notice that the investigation is a serious matter and they are expected to testify truthfully or there may be serious consequences.

3.B6A POLYGRAPH EXAMINATIONS

Normally, witness/subject polygraph examinations are not required for City Investigations. However, an independent polygraph of a witness or subject may be requested by an Investigating Officer (IO) who believes it is required to complete an official investigation.

The following rules apply:

1. Only City employees may be polygraphed.
2. Polygraphs will be completed after the investigating officer has finished obtaining witness/subject testimony.
3. Polygraphs will be completed/conducted by an independent, certified polygraph administrator.
4. The CI investigator will not be present during polygraph questioning. However, the CI investigator will provide the polygraph administrator with a list of questions that may be asked of the witness/subject.
5. To request a polygraph, the IO will make a request to the CI Director. The CI Director will then make a formal request to the witness/subject's department head. The department head may then direct the individual(s) to complete the polygraph.
6. Failure of a witness/subject to complete a polygraph may result in disciplinary action up to and including termination of employment.
7. Polygraph results will be kept confidential and will not be the sole source used to substantiate or unsubstantiate an allegation. Polygraph results will be included with the totality of facts and testimony and applied to the **preponderance of evidence** standard. (See Paragraph 3.B12.)

3.B7 PRE-INTERVIEW (RECORDING DEVICES OFF)

The pre-interview is an opportunity for the IO to relay to the subject or witness what to expect during the interview. Because most individuals interviewed are at least apprehensive, the pre-interview allows some time for them to relax.

The IO should consider "small talk" to try and relax the subject. Most subjects become concerned when they see a recording device (tape recorder). The IO should explain that everything will be recorded and possibly transcribed for later use. The IO should explain his/her role and that:

The IO is an impartial and unbiased fact-finder.
The IO's authority is delegated from the Mayor.

The subject may be asked to produce documents so support or refute testimony.

You must inform the subject:

You MUST tell the truth, and there are potentially severe penalties if you are untruthful.
You must NOT discuss the interview with anyone, unless represented by an attorney.
Your report does not recommend discipline or punishment; it is designed to present findings of fact to a department head/supervisor for action.
You will not receive a copy of the report. It will be treated as CONFIDENTIAL and will be given to your department head for action.
If the report results in a SUBSTANTIATED finding, you will receive an Investigative Summary of the facts (Attachment 6Aiii) from your department head.

3.B8 INTERVIEWS

For each subject and witness, tailor the subject interview. Key questions should be thought out ahead of time. For suspect interviews, confer with the CI Director and/or City Legal Department to ensure the proper rights advisement needed.

Advise subjects/witnesses that they may submit additional relevant information for the IOs consideration within a reasonable time following their interview.

Electronically record all witness testimony to accurately capture what was said during the interview. Do not allow witnesses to record the interview. When the case is complete, all electronic recordings must be provided to the CI Director together with the completed ROI.

For storage, electronic testimony will be stored (burned) on to a computer disk (CD), hard drive, or kept in a permanent electronic storage device that will allow retrieval when needed. If necessary, testimony may be transcribed verbatim (word-by-word) from the complainant's, subject's, and key witnesses' recorded testimony. At the discretion of the CI Director, nonessential summarized testimony may be acceptable, on a case-by-case basis or only portions of the transcribed testimony provided.

Sign all transcribed testimony to certify its validity. Add the following statement to the end testimony: "I certify the above to be a true sworn (or affirmed) testimony given to me on (date) at (place)."

For witnesses outside the local area, an IO may need to travel to meet and interview the witness or interview the witness telephonically. If the witness is interviewed telephonically, the IO must make arrangements to verify the witness' identity. The witness must be told the conversation is being recorded. However, the appointed IO will (when possible) interview all subjects or suspects in person.

If a witness' status changes during the course of an investigation to that of a subject or suspect, the witness must be re-interviewed and given an opportunity to respond to the suspected misconduct or allegations in light of their new status.

The CI Director will determine whether additional issues will be investigated separately and, if necessary, expand the scope of the investigation. If the scope of investigation is expanded, an addendum to the appointment letter must be completed. The IO will take no further action until consulting with the CI Director who will coordinate with the applicable department head and/or the Legal Department.

Conduct the proper read-in/rights advisement for a subject/witness prior to the interview/re-interview. Refer to Attachments 3. **The read-in/rights advisement is mandatory.**

Before any interview begins, each City employee interviewed will read and sign two forms: (1) Employee Witness Acknowledgement Form (see Attachment 4B); and (2) a Garrity Oath Form (see Attachment 4C). Citizens interviewed will read and sign only a Citizen Witness Acknowledgement Form (see Attachment 4A).

Witnesses who are City employees ***may not*** refuse to testify and may be subject to disciplinary action for refusing to testify or testifying untruthfully or incompletely.

IOs will report such incidences to the CI Director, who shall take appropriate action in coordination with the City Legal Department.

3.B9 PERSONS PRESENT DURING AN INTERVIEW

A typical interview will involve the investigating officer(s) and the witness/subject. The CI Director will approve any additional personnel present. The introduction of any unauthorized party into the process is a breach of CI confidentiality.

The subject employee's department head and/or supervisor will not attend any interview session.

Only a *suspect* has the right to have an attorney present during an interview; however, the attorney must not be allowed to answer any question for the interviewee.

If the subject to be interviewed is also the *suspect* of an alleged crime related to the CI or Legal Investigation, the IO will coordinate with the City Legal Department and CI Director before any interview is conducted. Special consideration must be given in order to protect the individual's *Miranda* and *Garrity* rights.

When individuals interviewed are considered *subjects*, they may consult with an attorney but may not have an attorney present during the interview. Approval to have an attorney present during a witness or subject interview will be from the CI Director.

3.B10 POLICY REGARDING RIGHTS ADVISEMENTS

If during the course of an investigation, the IO discovers information leading them to believe matters of a *criminal nature* has occurred and a witness or subject becomes a possible *suspect*, the IO must stop the interview and consult with the CI Director and/or the Legal Department. In those cases, the administrative investigation will stop. The CI Director, IO, and City Legal Department will confer to determine if a separate criminal investigation is appropriate.

3.B11 READ-OUTS

During the read-out, the IO will explain that the subject/witness must not discuss the interview with anyone except their personal attorney. Follow Attachment 4E verbatim.

3.B12 STANDARD OF EVIDENCE

In the context of this directive, the standard of proof applicable to CI investigations is **proof by a preponderance of the evidence**. The "preponderance of the evidence" standard means:

- The IO is satisfied that the ***greater weight of the credible evidence*** supports the findings of fact.

- The IO has determined that the evidence supporting one side in the case is more convincing than that supporting the other.

The weight of the evidence supporting a conclusion is not to be determined by the sheer number of witnesses or the volume of evidentiary matter presented, but rather by the evidence which best accords with reason and probability.

The IO determines that it is ***more likely than not*** that the events have occurred.

IOs must be careful not to apply this standard too mechanically. Quality counts as much as quantity, and an IO may choose to believe one witness rather than five if the one is sufficiently credible, and the five are not. In addition, there is no way to measure the weight of a document against the testimony of a witness other than by applying the rules to analyze evidence discussed below.

3.B13 ANALYZING THE EVIDENCE

Keeping in mind the standard being sought (preponderance of the evidence), IOs will follow a six-step process when analyzing the evidence collected:

1. **What are the allegations?** Review the allegations framed prior to starting the investigation. Do they still make sense? Framed allegations must be addressed in the report.

2. **What are the facts (what happened)?** *Facts* ***are not*** conclusions, but rather information and data from which the IO must draw logical conclusions. Facts are not always consistent and are often in dispute. The IO must analyze the evidence and

use the *preponderance of the evidence* standard to make the tough call and arrive at logical/concrete decisions.

3. **What standards apply (what are the rules)?** Applicable standards should have been identified at the beginning when properly framing the allegations.

4. **Were the standards violated (was a rule, regulation, or policy broken)?** Once the standards have been identified, the IO must then decide whether the facts, taken as a whole, would lead a reasonable person to conclude the standards were violated. IOs should consult the CI Director when in doubt about whether a particular action violated policy, procedure, or standards. However, the final decision rests with the CI Director during the final approval process.

5. **Who violated the standards, and do any mitigating factors exist?** When assessing whether a certain individual violated particular standards, IOs should keep in mind the standard of proof by a preponderance of the evidence. The preponderance standard applies to factual determinations, determinations of intent, and ultimately to the IO's conclusion about whether the subject violated the standard alleged by the complainant and whether the violation constitutes wrongdoing.

6. **When did the improper behavior or conduct occur?** A key consideration is the availability of information or evidence to support the investigation. Memories fade, individual responsibilities change, personnel move to new job assignments, and documents are retired; yet the IO must determine what the facts were at a specific point in time. Additionally, the IO must determine the standards applicable at the time and the subject's status. The investigative scope cannot be all-inclusive; the focus is a specific set of events at a point in time.

3.B13.A DISCOVERY OF ADDITIONAL SUBJECTS DURING AN INVESTIGATION

Occasionally, during the analysis of the investigative evidence or during the analysis of investigative testimony, additional *subjects* may be identified. If this occurs, the new subject(s) will NOT automatically be included and/or added to the Report of Investigation. Before any allegations are made against any new subjects found during an investigation, the following process must occur:

1. The CI investigator will brief the CI Director and/or Senior Staff Attorney.
2. If there is agreement by the CI Director or Senior Staff Attorney on the allegation(s) against the new subject, the subject's department head will be briefed on this information.

3. The department head must then request an investigation be conducted. This can be done verbally, electronically, or via a formal letter requesting an investigation.
4. If an investigation is requested, the CI Director will determine if the subject will be included in the original investigation or if a separate Report of Investigation will be completed.

3.B14 CATEGORIES OF FINDINGS

There are seven possible categories of findings for a CI investigation:

SUBSTANTIATED: A substantiated finding results when a preponderance of the evidence supports the complainant's allegation of a wrongdoing or violation of the City's regulation, procedure, or the City's policy or standard. The facts indicate that a violation of standards occurred.

UNSUBSTANTIATED: An unsubstantiated finding results when a preponderance of the evidence supports the conclusion that the alleged wrongdoing **did not** occur. The facts indicate no violation of standards occurred. When there is not enough evidence to support a finding of "substantiated," then the finding must be "unsubstantiated" with an explanation as to why (or what) evidence was not available.

UNFOUNDED: An unfounded finding means that the allegations are not true.

POLICY REVIEW: A policy review finding means the allegation may be true or contain elements to support the truth, however the action of the agency or employee was consistent with agency policy but the policy was deficient.

CLOSED: A case marked as "CLOSED" is connected to either Claim cases or Legal cases without an outcome attached to the case.

WITHIN POLICY: A case marked as "within policy" is defined as an officer involved shooting and deemed as within the Use of Force Policy.

OUT OF POLICY: A case marked as "out of policy" is defined as an officer involved shooting and deemed as out of policy in the Use of Force Policy.

3.B15 INVESTIGATION INFORMATION

All investigation reports should contain a standard "attorney-client, work product" or appropriate statement to limit the report's distribution only to those who need to know. All investigations should remain confidential, and information should be treated as such by investigators, supervisors, and employees. Supervisors need to be informed regarding an investigation and be trusted to keep the information confidential. No detailed information will be released until the investigation is completed. The "Witness Acknowledgement" document that employees are required to sign shall be completed and submitted with the report (Attachment 4B).
Citizen witnesses will sign a separate acknowledgement form (Attachment 4A).
The "Garrity Warning" document that employees are required to sign shall be completed and submitted with the report (Attachment 4C).

3.B16 FINDINGS OF FACT

Each report shall state the "Review of Evidence". The report of facts (evidence) must stand on its own. The employee's department head and/or supervisor's duty will be to act on the facts presented. See Section 3.C9 for case closure instructions.

CI Reports of Investigation will include a conclusion which restates the allegation(s) and summarizes the report findings based on the preponderance of evidence. Five categories will be used as appropriate: SUBSTANTIATED, UNSUBSTANTIATED, UNFOUNDED, POLICY REVIEW, AND CLOSED.

SECTION 3C – POLICY AND PROCEDURES REGARDING REPORT WRITING

3.C1 REPORT FORMAT

All Reports of Investigation (ROI) for "CI cases" will be written using the standard format at Attachment 6A.

Note: ROIs for Claim or Legal investigations will be written using the formats described at Attachment 6B. Report requirements differ with each format.

The "CI" ROI will consist of a cover page with a CONFIDENTIALITY notice. The main body of the report will consist of four sections labeled:
Section I, Tab A Authority and Scope
Section I, Tab B Appointment Authorization
Section II, Background and Allegations

Section III, Interviews and Investigative Review of Evidence
Section IV, Analysis and Conclusion
Section V, Findings
Section VI, Official forms and Evidence Exhibits

All CI investigations (and their findings) must be documented with objectivity, thoroughness, and in a timely manner. The ROI must maintain an impartial and balanced tone.

Unless the IO is providing a direct quote from testimony, the IO will avoid including adverbs or other modifiers in the report which may imply a bias toward the subject or witness. Reports must be facts-based. Two examples below illustrate this point.

1. Here is an example of an acceptable statement: "A review of computer records shows that on 7 June, 2009, Mr. Jones accessed a restricted computer and e-mailed a file to his personal computer. This violated rule #1 which states information must be used for official purposes only." (Note: The above is fact-based.)

2. Here is an example of an unacceptable statement: "A review of computer records shows that on 7 June, 2009, Mr. Jones *blatantly disregarded City rules* and accessed a restricted computer and *secretly and deliberately* e-mailed a file to his personal computer. *This flagrantly demonstrated a complete disregard for proper procedure and* violated rule #1 which states information must be used for official purposes only." (Note: The words added in *italics* could indicate bias by the IO.)

Exclude any bias for or against the complainant, subject, or witnesses. **An ROI must be a stand-alone document**. All the essential facts, documents, portions of regulations, interviews, etc., must be included in the report so a reader can arrive at a determination without reference to information outside the report.

The ROI will address each of the framed allegations in the report.
The ROI will list all rules, regulations, or policy applicable to the allegation.
The ROI will list all witnesses interviewed regarding each allegation.
The ROI will state the "Findings of Fact" and include all appropriate evidence gathered, i.e., witness statements, summaries of statements, and/or written documentation.
The ROI will include an analysis explaining why the findings of fact substantiate or do not substantiate each allegation.

The conclusion of the ROI will contain a listing and statement of each allegation as: **SUBSTANTIATED**, **UNSUBSTANTIATED**, **UNFOUNDED** or **POLICY REVIEW.** (Not applicable to Legal Cases OR Claim Cases)

The ROI will not recommend specific punishments or administrative actions. Such recommendations are beyond the scope and purpose of the ROI which is objective fact finding.

The CI Director approves the report by signing the first page of the ROI. The Senior Staff Attorney will provide the Legal Review and sign the first page of the ROI. (See Attachment 6A.)

If requested by the Mayor, any recommendations for discipline or follow-on administrative actions will be provided under separate cover by the City Legal Department. The CI Director *will not* be involved in these decisions.

All CI Reports of Investigation must comply with the standardized CI case file format described below.

3.C2 CASE FILES

A case file is a standardized compilation of documents relevant to a CI complaint. During an investigation, the assigned IO will be responsible to safeguard all materials, testimony, etc. that will be used in completing the ROI. It contains the bulk of the IO's work and contains all the supporting evidence associated with the Report of Investigation. Following completion of the ROI, the case file will be turned over to the CI Administrative Assistant for permanent filing or disposition. Case file information will not be filed in an individual's City personnel file.

IOs will not permanently (or personally) keep any information associated with a case file or Report of Investigation.

NOTE: Each case file will be a two sided file folder with the following documentation setup:

Left side: Case evidence with each document marked as exhibit 1, 2, 3, etc.
Right side: Report document, appointment letter, summary letter (if needed), and notification letter.

All documents will be marked with a provided "Exhibit ____" stamp and initialed by the IO.

3.C3 REQUIREMENTS FOR PROGRESS REPORTS

The CI Director may require the IO to provide a written progress report for all cases not finalized by the assigned suspense date. The progress report will be in a letter format to the CI Director and should include any reason(s) for the delay and a projected completion date. The progress report may be included in Section IV or the ROI, if necessary. (See Attachment 5G.)

3.C4 REQUIREMENT FOR QUALITY REVIEW

All Reports of Investigation will receive a quality review by the CI Director. After the ROI is submitted, the CI Director will conduct a staff meeting with the IOs and review the report to ensure completeness plus compliance with this instruction and other appropriate directives. The report will also be reviewed for objectivity. The Senior Staff Attorney and/or City Legal Department will review the report for legal sufficiency before forwarding the report for action. Page one of the ROI will be signed and dated by the CI Director and Senior Staff Attorney indicating approval.

3.C5 ROI INTERNAL EDITING AND REWORK

If the CI Director disagrees with the analysis and/or findings in the ROI, determines there is an investigative deficiency, or the investigation is administratively incorrect, the CI Director will return the case to the IO to be reworked.

If a case needs to be returned to the IO to be reworked due to deficiencies, the CI Director may prepare a letter explaining the specific problems and rationale along with the minimum requirements for sufficiency.

Occasionally, there may be a case where the CI Director disagrees with the IO's findings and conclusions, but determines it to be administratively and investigative sufficient. The CI Director may decide not to return the case to the IO.

The CI Director has the final authority to approve or disagree with the findings and conclusions on a CI investigation. All disagreements, both with the findings and conclusions, must be documented in the ROI with an addendum to Section III as appropriate.

3.C6 ROI REWORK DUE TO NEWLY DISCOVERED INFORMATION

The ROI is considered "final" when it is signed by the CI Director and presented to the department head for action. If, prior to any disciplinary action taken by the department head and/or supervisor, new information is discovered which *may reverse the finds of fact,* the department head will return the report to the CI Director for possible rework.

For example, if it was discovered that a key witness was not interviewed, if additional documentation was revealed, or a supervisor has additional information that should have been included, the report will be returned and an addendum to the ROI will be written and added to Section III. The decision for rework rests with the CI Director.

3.C7 REQUIREMENT FOR LEGAL REVIEW

At a minimum, all reports will be reviewed by the Senior Staff Attorney or, when appropriate, a member of the City Legal Department, for legal sufficiency before the CI Director approves the report and its findings.

"Legal sufficiency" in this limited context is a review of the ROI (and supporting documentation if required) to determine whether:

1. Each allegation has been addressed.

2. The alleged violation of City regulation, procedure, or policy has been properly stated and determined.

3. The IO reasonably applied the preponderance of the evidence standard to support the finding(s).

4. The analysis is supported by sufficient evidence and consistent with the findings of fact.

5. The investigation complies with all applicable legal/administrative requirements.

6. Determine if any errors or irregularities exist, and if so, their legal effects, if any.

If it is determined the report does not meet the criteria above, it will be returned to the IO for rework.

ROIs will not be delivered to department heads/supervisors without a legal review.

3.C8 DIRECTOR APPROVAL

Final approval of a CI investigation rests with the CI Director.

The CI Director will sign and approve the ROI in writing. (See Attachment 6.)

In rare cases where the CI Director disagrees with the IO's findings and conclusions, and agreement between the IO and CI Director cannot be reached, the CI Director will non-concur with the ROI in writing in an addendum to the ROI. This will be added to Section III of the report.

3.C9 ROI CLOSURE REQUIREMENTS

Upon the director's approval of a Report of Investigation, the mandatory actions required to close a case are:

1. Report of investigation approved and signed by the CI Director

2. Subject's department head, supervisor, and subject as appropriate, notified of results

3. The department head and/or supervisor provided with a copy of the ROI

4. Subject(s) notified of results by department head and/or supervisor

5. The ROI is returned to City Investigations, and the case file is closed/filed.

3.C10 NOTIFICATION REQUIREMENTS FOR COMPLETED INVESTIGATIONS

The CI Director will notify the subject's department head, supervisor, and/or the City Legal Department of the results of the investigation in writing. However, at the discretion of the CI Director, department heads and/or supervisors may first be informed via telephone call. (Note: e-mail, text messages, etc. will not be used.)

The notification letter must include a description of the specific allegations and related findings. The letter must not contain the names of the complainants, witnesses, or other subjects of the investigation. Refer to Attachment 7 for a sample results-notification to the subject's supervisor with an endorsement for the supervisor's notification to the subject.

Reports of Investigation for "CI cases" will be hand delivered (with the CI Director's notification letter attached) from the Office of City Investigations by City Investigations staff directly to the subject's department head and/or supervisor. ROIs will not be copied and sent electronically.

The supervisor must, in turn, notify the subject(s) of the results of the investigation. This should be accomplished verbally and in writing to the employee.

The CI Administrative Assistant will maintain a list of all Reports of Investigation given to department heads and/or supervisors with the date the report was received. This will be tracked by the department head/supervisor and City Investigations until the ROI is returned to CI for filing. Normally, the report should be returned to CI within 30 days.

The CI Administrative Assistant will utilize a standard mail/e-mail form notification for cases involving City employees, Fire and Police for the following case type:

- All City/Fire/Police: CI cases "Unfounded"
- All City/Fire/Police: CI cases "Unsubstantiated"
- All other notifications for citizen complaints will receive mail/e-mail notification when provided an email address via the complaint form.
- Attachment 8

3.C11 DEPARTMENT HEAD RESPONSIBILITIES

Department heads and/or supervisors are charged with taking whatever disciplinary action may be necessary following the Report of Investigation. In some cases, consultation or coordination with the City Legal Department will be required. *The Office of City Investigations will not recommend, be involved with, or be consulted in any way regarding post-ROI disciplinary actions.*

Department heads should complete any required disciplinary action within 30 days of receipt of the ROI. All department heads will send in writing to City Investigations the outcome of discipline for City employees.

ROIs must be kept CONFIDENTIAL by the department head/supervisor and will not be distributed. ROIs should be returned by the assigned return date specified in the Report Completion Letter (See Attachment 7B) that is attached to the ROI.

An *Investigative Summary Report* (See Attachment 6Aiii, Green cover) is completed for all substantiated cases. A copy of the summary is then given to the subject of the investigation who was substantiated of policy charges. The summary report can be used in any administrative due process or disciplinary meeting or hearing. Certain information may be redacted to protect confidential information.

NOTE: When completed Reports of Investigation are provided to department heads or supervisors, they will not be copied or reproduced in any form, nor will the ROI be released to the subject employee. ***ROIs will not be placed in an individual's City personnel file. ROIs will be returned to CI for filing.***

3.C11A INVESTIGATIVE SUMMARY REQUIREMENT

When an ROI results in a SUBSTANTIATED finding, the department head or supervisor will be provided with an Investigative Summary of the Report of Investigation. The purpose of the Investigative Summary is to provide the supervisor and subject(s) with a summary of the facts discovered during the investigation. This will be the document introduced in any post-investigation disciplinary hearing/action, not the actual Report of Investigation.

The Investigative Summary (Attachment 6Aiii) will include the allegation(s) and the facts as they were presented in the ROI except the subject's name, sensitive information, and the names of witnesses will not be included. Investigative Summary Reports will include "Findings" as summarized in the ROI.

Note: An Executive Summary may be completed (Attachment 6Aiv) for Legal cases where information is condensed to facts relevant to the case.

6.C12 RESPONDING TO COMPLAINANTS

When appropriate, the complainant will receive a letter from the CI Director outlining the general completion of the case. (See Attachment 8.)

Responses to complainants should address all allegations as framed during the complaint and analysis, but will not contain case specifics. The response does not

necessarily have to address each individual question or allegation originally made by the complainant.

SECTION 3D – PROCESSING SUPERVISORY REPRISAL, ABUSE OF AUTHORITY, AND RESTRICTION COMPLAINTS

Reprisal complaints usually come from employees who believe their supervisor has taken, directed, or threatened some negative personnel action against them which they feel is unjust.

Typically this happens after an employee makes a complaint to a supervisor, the City Investigations Office, or any senior official regarding wrongdoing or points out possible fraud, waste, or abuse in City government.

The following outlines City policy for processing reprisal complaints.

City Investigations **must** investigate complaints containing allegations of reprisal made against supervisors or other employees.

3.D1 CONDUCTING A REPRISAL COMPLAINT ANALYSIS

The IO receiving the complaint must expeditiously conduct a thorough reprisal complaint analysis to determine whether an investigation is warranted.

Before conducting a reprisal complaint analysis, CI must find out if the complaint or allegation which constituted the ***protected communication*** was properly addressed.

If the complaints/allegations were properly addressed, CI will obtain a copy of the applicable documents from the appropriate office/department to assist them during complaint analysis.

If the allegations were not properly addressed, then CI will refer the matter to the appropriate office/department for action or conduct a complaint analysis on the allegations to determine the need for further CI action.

Reprisal complaint analysis will be conducted following the **acid test** procedures specified below.

The **acid test** is a four-part process which aids the IO reviewing a supervisory official's conduct in order to in evaluate if reprisal occurred. It is an integral part of the reprisal complaint analysis, and all four questions of the acid test must be completed and included in the reprisal complaint analysis.

If the reprisal complaint analysis determines that a reprisal investigation **is** warranted, then the investigation should be promptly conducted.

If the complaint does not meet the test for reprisal, but the complaint analysis still identifies the need for a CI investigation, then treat the allegations as a personal complaint and process it accordingly.

The ROI must identify all *protected communications*, all personnel actions alleged to be acts of reprisal taken after the protected communication was made, and all responsible management officials.

The ROI must contain a thorough acid test for reprisal with all four questions answered for **each** allegation of reprisal. (Refer to Paragraph 3D3.)

The ROI must contain a chronology of events beginning at least with the complainant's **initial** *protected communication* and including adverse personnel action taken against the employee as a result of the *protected communication.*

The completed ROI must contain a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries of interviews conducted.

3.D2 PROTECTED COMMUNICATION

A *protected communication* is any complaint regarding wrong-doing, violations of rules, law, or policy, accusations of fraud, waste, and abuse, or other misconduct, made by an employee to a senior supervisor, department head, or any other senior/government official.

3.D3 ACID TEST FOR REPRISAL

The "acid test" is a four-part process, which aids the IO in determining if reprisal occurred and will be incorporated into Section III of the ROI. The questions for the acid test are:

1. Did the employee make a "protected communication" (i.e., complaint or allegation of wrongdoing to a supervisor or senior official)?
Answer Yes or No. Provide the details including the dates of the protected communication, to whom the protected communication was made; and what the protected communication concerned.

2. Was an unfavorable personnel action taken or threatened; or was a favorable action withheld or threatened to be withheld following the protected communication?
Answer Yes or No. Provide an explanation describing what was the unfavorable or withheld favorable personnel action, or threat thereof, taken or withheld. Detail which official(s) were responsible for which action.

3. Did the official(s) responsible for taking, withholding, or threatening the personnel action *know* about the protected communication?
Answer Yes or No. State the supporting facts, evidence and testimony. It is important to state <u>*when*</u> *each official responsible for the adverse action became knowledgeable. Give specific dates whenever possible. If an exact date is not known, the phrase "on or about" may be used when it fits the time frame in question. If the responsible official did not know about the protected communication, then there was no reprisal.*

4. Does the preponderance of evidence gathered establish that the unfavorable personnel action would have been taken anyway if the protected communication had *not* been made?
Answer Yes or No. Be specific and explain the logic and rationale of the decision. Highlight any reason there is a genuine connection between the adverse personnel action and the protected communication. Highlight any reason there is not a connection. When answering question #4, the following related questions regarding the personnel action must be addressed in the analysis as separate subheadings:
   (1) ***Reasons*** *stated by the responsible official taking, withholding, or threatening the action against the employee*
   (2) ***Reasonableness*** *of the action taken, withheld, or threatened considering the employee's performance and conduct*
   (3) ***Consistency*** *of the actions of responsible management officials with past practice*
   (4) ***Motive*** *of the responsible official for deciding, taking, or withholding the personnel action*

3.D4 ABUSE OF AUTHORITY

If an allegation does not meet the criteria of reprisal, there still may be "abuse of authority" by the responsible official who has taken a perceived unfavorable personnel action.

Definition: *Abuse of Authority* is an *arbitrary and capricious* exercise of power by someone (a supervisor, manager, senior official, or City employee) that *adversely* affects any person (employee or citizen), or results in personal gain or advantage to the supervisor, manager, senior official, or City employee.

The IO will answer the following questions to help determine if abuse of authority has occurred:

1. Did the responsible management (supervisory) official (RMO's) actions either:
   a. Adversely affect any person? (i.e., demotion, extra duty, etc.), or
   b. Result in personal gain or advantage to the RMO? (Promotion, award, etc.)
   If the answers to questions (a) and (b) are "no" then it is not necessary to consider question #2. If the answer to either (a) or (b) is "yes" then consider questions #2 and #3.

2. Did the RMO act within the authority granted under applicable regulations, law, policy, etc.?

3. Was the action arbitrary and capricious? Consider the following in your analysis:
   *What were the **reasons** stated by the responsible official for taking, withholding, or threatening action?*

   *What was the **reasonableness** of the action(s) taken, withheld, or threatened considering the employee's performance and conduct?*

   *Were the actions taken by the RMO **consistent** with past practice?*

   *What was the **motive** of the RMO for deciding, taking, or withholding the personnel action?*

For accusations of abuse of authority, the IO will include the above analysis in Section III of the ROI.

3.D4A ABUSE OF POSITION

It is City policy that employees will not use their position to obtain access to records, information, or equipment for personal or non-City business purposes.

3.D5 RESTRICTION COMPLAINTS

It is the policy of the City of Montgomery that any employee has the right to contact the Office of City Investigations at any time or complain or point out wrongdoing to any senior City official at any time (i.e., make a protected communication). However, the employee should first consider (though it is not mandatory) to try and handle complaints at the lowest supervisory level or through normal personnel channels.

Restriction occurs when an employee is *prevented* from contacting CI, a supervisor, or other senior official, in order to complain or make any allegation of wrongdoing or is prevented from contacting a more senior supervisor or senior official to make a protected communication. This denies an employee use of the City's CI system. When investigating a complaint of restriction the IO must consider the following:

1. Did a supervisor, manager, or senior official attempt to limit the employee's access to CI or other supervisors?
2. What was the intent of the supervisor, manager, or senior leader in doing so? Consider:
   (1) **Reasons** stated by the supervisor, manager, or senior official for restricting or taking actions that created barriers to contacting CI or making a protected communication
   (2) **Reasonableness** of the actions
   (3) **Motive** for the actions
3. Would a reasonable person, under similar circumstances, believe he/she was actually restricted from making a protected communication or contact with CI?

The IO will include the above analysis in Section III of the ROI.

NOTE: Restriction may be communicated by a variety of means (verbal, oral, written policy, orders, counseling, or public statement, etc.).

3.D6 WORKPLACE AND HARASSMENT AND SEXUAL HARASSMENT COMPLAINTS

REPORTING AND INVESTIGATION OF CHARGES OF HARASSMENT, RETALIATION, OR DISCRIMINATION

Any employee who believes that he or she is being harassed should report it to the direct supervisor. The supervisor will initiate the investigation. If the supervisor is the harasser or avoiding the issue, report to the next level supervisor or immediately in writing or verbally to the City County Personnel Board and/or the Department of City Investigations. If the complaint is made verbally, the complainant should make and maintain a written account detailing the date of the incident(s), what was said or done, and the names of all witnesses.

Harassment in any form can create a hostile, offensive, and/or an intolerable work environment. Workplace harassment can occur based on (but not limited to) sex, gender identity, race, religion, national origin, color, disability, or some other protected status.

All complaints of harassment will be taken seriously and will require some level of investigation. This may include any type of investigation from an Inquiry to a CI or Legal investigation. The CI Director and Senior Staff Attorney will determine the type of investigation required.

In some cases, harassment complaints will require that an investigation be designated as a "Priority 1" to begin without any delay. The CI Director and Senior Staff Attorney will direct this action, as needed.

As a minimum, the investigation and /or investigation planning should answer the following questions when interviewing the complainant:

1. Has the complainant spoken with anyone in the supervisory chain of command about the alleged harassment?
2. How does the complainant describe the alleged harassment?
3. Does the alleged harassment disrupt, interfere with, or create a hostile or offensive working environment for the complainant?
4. Is the alleged harassment based on race, color, gender, religion, sex, sexual preference, nationality, age, or any other "protected" status?
5. Did the alleged harassment include unwelcome or unwanted sexual advances, request for sexual favors, or include verbal or physical contact of a sexual nature?

6. Does the alleged harassment fit any of the "Prohibited Acts of Harassment" listed in the City of Montgomery Employee Handbook?
7. Due to the potential sensitivity of a sexual harassment complainant, who should conduct the interview? Would the complainant be more comfortable talking to someone of the same gender?
8. Does the interview need to be completed in an area that will make the complainant as comfortable as possible?
9. Can the complainant provide names of potential witnesses to the alleged harassment?
10. Can the complainant provide any written documentation or other proof (i.e., pictures, cell phone, or social media) of the alleged harassment?

As a minimum, the investigator should consider the following when interviewing the employee (subject) accused of harassment:

1. Does the subject understand the specific nature of the complaint?
2. If the subject denies the harassment complaint, what information can be provided to refute the accusation?
3. Can the subject provide any witnesses to refute the accusation?
4. If the subject is a supervisor, has there been any action against the complainant that could potentially be viewed as retaliation or abuse of authority?

SECTION 3E – FORMAL FEEDBACK PROCESS

Following an investigation, feedback through the supervisory chain-of-command is critical. When an investigation is completed, the CI Director will inform department heads and supervisors of the results just in case immediate action is required. This feedback may be critical for timely disciplinary action.

When feedback on investigation results is provided, the information must remain confidential between the supervisor and CI. If the case will result in legal action, the CI Director will consult and coordinate with the City Legal Department. The CI Director in consultation with the Legal Department will approve what specific information contained in the ROI will be released. *Do not release the ROI to the subject.* It must be retained by the supervisor and returned to City Investigations.

For Legal Reports of Investigation, only the Legal Department will approve release of any information contained in the report.

Citizens who lodge complaints involving the City should receive a letter that explains (at least in general terms) what was done as the result of their complaint. (See Attachment 8A.)

3.E1 REPORT TO THE MAYOR

CI will also provide a monthly report to the Mayor summarizing all CI cases and investigations. In addition, the CI Director will meet with the Mayor, City Attorney, and Senior Staff Attorney to discuss this report.

Feedback is critical at the cabinet/director level. In addition, there shall be a Review Board meeting between the Mayor, City Attorney, and City Directors to discuss employee discipline following CI investigations. The review board will only meet as required at the request of the Mayor.

The Review Board meeting would include a general discussion of CI cases. The discussion need not mention specific individuals by name but focus on the general facts of a case and the follow up action. Supervisors would discuss the action taken and why.

SECTION 3F – WEBSITE REQUIREMENT

The Office of City Investigations will have a separate section on the homepage of the City's Website titled CITY INVESTIGATIONS. It will include a downloadable complaint form, instructions for filing a complaint, and a directory of staff. It shall contain a description of the process for filing a complaint and what to expect once a complaint is filed with CI. A copy of a Claim Form and instructions to be filed with the City Clerk shall also be on the web page.

Chapter 4

Glossary of Key Terms

NOTE: Key Terms described in Chapter 4 of this directive are provided only for the limited purpose of establishing definitions applicable to City of Montgomery investigations. For additional terms and definitions, refer to the City of Montgomery Employee Handbook.

Abuse – Intentional wrongful or improper use of resources. Examples include misuse of supervisory position or authority that results in misuse of City equipment.

Abuse of Authority – An arbitrary or capricious exercise of power or authority over an employee or citizen. To qualify as arbitrary or capricious: (1) the action either adversely affected the rights of an employee or citizen, or resulted in the personal gain or advantage of the responsible management official (RMO); (2) the RMO did not act within the authority granted under applicable law, policy, or regulations; (3) the RMO's action was not based on relevant factors; or (4) the RMO's action was not rationally related to the relevant data and factors.

Abuse of Position – Obtaining access to records, information, or equipment for personal or non-City business purposes or for use in non-City business-related situations. Abuse of position occurs when an individual uses employment privileges with the City to obtain records, information, or use of equipment that would not be available to non-City employees.

Acid Test – A test the Investigating Officer uses to determine if reprisal or abuse of authority has occurred. (See Paragraph 3.D3 for instructions on the use of the Acid Test.)

Administrative Actions – Non-criminal proceedings or actions taken against an employee by a supervisor. This includes (but is not limited to) verbal counseling, written letters of counseling, admonishment, temporary suspension, and/or termination of employment.

Adverse Information – Information that constitutes: (1) a violation of criminal law; (2) an abuse of authority; (3) Fraud, waste and abuse, or mismanagement; (4) misconduct; (5) prohibited discrimination or sexual harassment; and/or (6) a matter

or action that may adversely reflect an individual's judgment or exercise of authority.

Allegation – A postulated assertion (assumed without proof) formed concerning an individual or detrimental condition. An allegation is a hypothetical statement containing four elements: (1) When (in what time frame did the behavior occur); (2) Who (the person identified); (3) What was improperly done (the specific behavior or conduct that was improper); and (4) In violation of what standard (law, policy, regulation, instruction, or procedure).

Appointing Authority – The individual holding the position who has the singular authority to appoint an individual to conduct an investigation. In the City of Montgomery, the appointing authority is the Mayor, who delegates authority to appoint investigating officers and conduct investigation to the Director, Office of City Investigations.

Arbitrary – Based on or subject to individual discretion or preference, or sometimes impulse.

Assertion – A declaration that is made emphatically, as if no supporting evidence were necessary.

Authentication – The process of having a document, such as correspondence, personal notes, electronic/computer records, etc., verified as genuine.

Bullying - Persistent or repetitive behavior that is insulting, disrespectful, abusive, or otherwise unwelcome or objectionable, either direct or indirect, whether verbal or nonverbal, physical or otherwise, conducted by one or more persons against another person or persons, at work or in the course of employment. Bullying can occur either inside or outside the workplace. Bullying can also take place via social media under circumstances that include discriminatory remarks, harassment, threats of violence, or similar inappropriate or unlawful conduct.

Capricious – Determined by chance, impulse, or whim rather than by necessity or reason.

Case File - A compilation of documents relevant to a complaint investigation that are gathered and prepared during the investigation process. (See Chapter 3 for proper case filing procedures.)

Chain-of-Command – For the purpose of this instruction, chain-of-command includes those exercising authority over an employee, including an employee's supervisor and succession of supervisors above, through the department head and finally, the Mayor, City of Montgomery.

Closure – A case that results in a CI investigation will be considered closed after all required reviews and approval by the appointing authority (CI Director) are completed and the subject's department head and/or supervisor has been notified of the results.

Complainant – Any person making a complaint against any City of Montgomery employee, process, organization, or operation.

Complaint Analysis and Investigation Plan – A process to determine the most effective resolution strategy to resolve and/or investigate the issues raised by the complainant's assertion. It is mandatory for all complaints filed against the City. (See Paragraph 3.A8 the directions.)

Complaint Clarification – The process of reviewing a complaint to ensure the intent of the complaint is verified.

Complaint Resolution Process – All actions necessary to resolve a complaint from receipt to closure.

Confidentiality – The protection of individual privacy.

Contact – The act of receiving a complaint, verbal or written, from a complainant.

Criminal Offense – A violation of applicable state, federal, or local criminal law.

Discovery Requests – A request for information to be used by legal counsel in preparation for legal court proceedings such as trial.

Dismiss – A complaint is dismissed if the complaint analysis determines it is not appropriate for investigation because:

1. It discloses no recognizable wrong or violation of law, policy, procedure, or regulation.
2. It is a matter not appropriate for CI investigation and should be handled by some other administrative process.

3. It is not timely. The complaint has not been filed within 60 days of the alleged wrong, and there were no extraordinary circumstances justifying the delay.
4. The complainant refused to provide sufficient evidence to properly conduct a complaint analysis.
5. The investigation would not appreciably affect the outcome sought.
6. The allegations have already been handled/investigated/reviewed by another office, and the complainant provides no new evidence or information that justified further investigation.

Evidence – Information or data upon which a conclusion or judgment may be based. Evidence is information that tends to prove the existence of a fact.

Fact – Information or data that has actual existence or occurrence.

Follow-up – A case will be placed in follow-up status when awaiting results of supervisory corrective action.

Fraud – Any intentional deception designed to unlawfully deprive the City of Montgomery of something of value, or to secure from the City an individual benefit, privilege, allowance, or consideration to which the individual is not entitled. Such practices include, but are not limited to:

1. The offer, payment, acceptance of bribes or gratuities, or evading or corrupting inspectors or other officials.
2. Making false statements, submitting false claims, or using false weights and measures.
3. Deceit, either by suppressing the truth or misrepresenting the material facts, or to deprive the City of Montgomery of something of value.
4. Adulterating or substituting materials, falsifying records, books, or accounts.
5. Conspiring to carry out any of the above actions.
6. For purposes of this instruction the definition can include any theft or diversion of City of Montgomery resources for personal or commercial gain.

Frivolous Allegation - As used in this instruction, following a thorough complaint analysis, any allegation that fails to allege facts that, if true, would constitute a violation of standard, law, regulation, or policy.

Gross Mismanagement – Any management action or inaction that creates a substantial risk of significant adverse impact on the City's ability to accomplish its mission. It goes beyond simple negligence or wrongdoing. There must be an element of blatancy.

Gross Waste of Funds - An expenditure that is significantly out of proportion to the benefit expected. It is more than a debatable expenditure.

Harassment- Actions in the workplace by any employee that result in an individual not being treated with courtesy, respect, consideration, and professionalism. Harassment may occur for *any* discriminatory reason, including but not limited to, race, gender, pregnancy, sex, sexual orientation, gender identity, marital status, national origin, disability, age, or religion.

Hearsay – Information from an individual attributed to another individual or third party.

Impartiality - A principle holding that a decision should be based on objective criteria rather than on the basis of bias, prejudice, or preferring the benefit to one person over another for improper reasons.

Improper Conduct – Conduct (acts or omissions) found to violate an identifiable directive, instruction, policy, regulation, law, or standard without regard to knowledge, motive or intent.

Inappropriate Conduct – Conduct or action that any reasonable person would consider likely to erode confidence in the integrity of the City of Montgomery, but does not violate an identifiable directive, instruction, policy, regulation, rule, or statute.

Independence – For the purpose of this instruction, remaining free from any actual or perceived bias or conflict of interest during an investigation.

Insubordination - The willful or intentional failure or refusal of an employee to carry out lawful and reasonable instructions, express or implied, of the employer. There are two types of insubordination:

- Minor insubordination- is the result of a failure by the employee to carry out lawful and reasonable instructions, and there is no overt, express, or verbal refusal.
- Major insubordination- is the result of a direct, overt refusal to carry out lawful and reasonable instructions.

Some examples of insubordination are as follows:

- Disobedience;
- Failure or refusal to carry out a lawful and reasonable instruction;
- Failure or refusal to submit to manager or supervisor as shown by demeanor or words;
- Disrespectful behavior towards manager or supervisor; and
- Failure or refusal to sign as received a written warning;

The above list is not all encompassing or all-inclusive.

Interrogatories – A formal list of written questions prepared by the IO for a witness to answer. Questions are revised and updated as facts are developed.

Investigation – A duly authorized, systematic, detailed examination to uncover facts or truth of a matter. For the purpose of this instruction, CI investigations are administrative in nature. They are fact finding rather than judicial proceedings. They are not criminal proceedings in which "proof beyond a reasonable doubt" is required. For CI investigations, the standard proof that applies is "proof by a preponderance of evidence." Investigations require formal collection of evidence, taking sworn testimony from complainants, witnesses, subjects, and documentation of the findings of fact in a Report of Investigation. A CI investigation is an evidence-gathering exercise to substantiate or not substantiate an allegation.

Investigating Officer (IO) – An individual appointed by the Mayor or CI Director to conduct an investigation in accordance with this instruction. Once appointed in writing, the IO is the personal representative of the Mayor, City of Montgomery. The IO's authority to investigate extends to all City departments and employees.

Investigative Summary Report – An abbreviated report summarizing the facts contained in a Report of Investigation to be used by a department head, supervisor, City Attorney, or hearing officer taking disciplinary action. (See Attachment 6Aiii.)

Lawful Communication – Any communication whether verbal or written or otherwise transmitted including complaints, witness statements, and testimony which is not otherwise unlawful. (See definition of unlawful communication.)

Legal Review – For the purpose of this instruction, a review of a Report of Investigation to ensure legal sufficiency before the appointing authority approves the report and its findings. (See Legal Sufficiency.)

Legal Sufficiency – For the purpose of this instruction, a review of the ROI by the Senior Staff Attorney and/or the City of Montgomery Legal Department to determine whether:

1. Each allegation has been addressed.
2. The alleged violation of City regulation, procedure, or policy has been properly stated and determined.
3. The IO reasonably applied the preponderance of the evidence standard in arriving at findings.
4. The analysis is supported by sufficient evidence and consistent with the findings of fact.
5. The investigation complies with all applicable legal and administrative requirements.
6. Any errors or irregularities exist, and if so, their legal effects, if any.

Misconduct – Conduct undertaken by a City employee with (1) the knowledge that the conduct violates a standard or willful disregard for the possibility; (2) the intention to harm another or willful disregard for that possibility; or (3) the purpose of personal profit, advantage, or gain.

Ombudsman – An official appointed to receive and investigate complaints made by individuals against other City of Montgomery officials or employees regarding abuses or capricious acts, investigates reported complaints, reports findings, and helps to achieve an equitable resolution of complaints.

Personnel Action – Any action taken on an employee of the City of Montgomery that affects or has the potential to affect that employee's current position or career.

Preponderance of Evidence – The standard of proof for CI investigations. The preponderance of evidence means that it is more likely than not that events have occurred as alleged. After weighing all the evidence (documentation and witness statements), the IO may substantiate a finding when the greater weight or quality of the evidence points to a particular conclusion as more credible and probable than the reverse. The amount of evidence is something to consider, but lots of bad evidence will not outweigh a smaller amount of good evidence. Some additional things to consider when weighing the evidence are witness demeanor, opportunity for knowledge, bias, motive, intent, and the ability to recall and relate events.

Prohibit – To prevent from doing something, to forbid or restrict by force of authority.

Proof Analysis Matrix – A framework that helps the IO organize the case. Specifically, it provides a construct for identifying the evidence needed to prove or disprove an allegation. The proof of analysis matrix may provide a reference outline for the analysis section of the ROI.

Protected Communication - Any complaint regarding wrong-doing, violations of rules, law or policy, accusations of fraud, waste and abuse, or other misconduct, made by an employee to a senior supervisor, department head, or any other senior/government official.

Protected Status - Federal protected classes include: Race, color, religion or creed, sex, age, physical or mental disability, and veteran status.

Quality Review – A review by the CI Director of the Report of Investigation and other investigative documents that ensures completeness and compliance with this instruction and other directives for objectivity and legal sufficiency.

Redact – To remove non-releasable material (such as blacking out with a marker).

Referral – When a complaint is transferred to another organization or department because the CI Director determines it is not appropriate for a CI investigation.

Report of Investigation (ROI) – The final stand-alone document produced by the IO after an investigation of an allegation(s). It contains all the essential facts, documentation, portions of regulations, policy, etc., and witness interviews and is written so the reader can arrive at the same determination as the IO without reference to information outside the report. The ROI will be written according to the format at Attachment Six in this instruction. The ROI is a subset of the case file. The ROI will have a Quality Review by the CI Director and a Legal Review by the City Legal Department before it is presented to the department head for action.

Reprisal/Retaliation – Threatening or taking an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action for making or preparing to make a protected communication. (See protected communication definition.)

Responsible Management Official (RMO) – Responsible management officials are: (1) official(s) who influenced or recommended to the deciding official that he/she withhold or threaten a management action; (2) official(s) who decided to take,

withhold, or threaten the management/personnel action, (3) any other official(s) who approved, reviewed, or endorsed the management/personnel action.

Restriction – Preventing or attempting to prevent an employee from making a complaint of wrongdoing to the Office of City Investigations, senior supervisor, or senior government official.

Self-Investigation – Investigating or directing an investigation into allegations pertaining to wrongdoing by the Office of City Investigations by any investigator assigned to the Office of City Investigations. If necessary, the Mayor will appoint someone outside of CI to conduct the investigation in accordance with this directive.

Senior Official – For the purposes of this instruction includes City of Montgomery Cabinet heads, senior supervisors, the Mayor and senior administrative staff, state and Federal officials in positions of authority.

Sexual Harassment – (An example but not limited to): A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and/or other oral and physical conduct of a sexual nature.

Standards – A law, regulation, policy, procedure, operating instruction, or custom of service that establishes a criterion for measuring acceptability.

Statement – A written or oral declaration of events made to an IO by a witness, subject, or suspect. Statements will be recorded and/or transcribed in accordance with this instruction.

Statutory Authority – Authority to act derived from statute. For example, the Mayor's authority to conduct investigations is derived from Act 618.

Subject – An individual against whom allegations of a non-criminal wrongdoing have been made and whose conduct is the focus of an investigation.

Substantiated Finding - A finding that results when a preponderance of evidence supports the allegation of wrongdoing or violation of law, regulation, procedure, policy, or standards. The facts (from documentation and testimony) indicate the complainant was wronged or the violation of standards occurred.

Summarized Testimony – A written summary of witness testimony prepared and certified by the IO. It normally includes only those items directly related to the

matters under examination. Summarized testimony is normally included in Section III of the ROI as it relates to a particular allegation.

Suspect – An individual suspected of a criminal offense. Identify someone as a suspect when the facts and circumstances known at the time of the interview are sufficient to support a reasonable belief the person to be interviewed may have committed a crime. Before interviewing a suspect, coordinate with the City Legal Department.

Systemic – A trend or pattern that relates to, or is common to, an organization.

Testimony – A solemn declaration usually made orally by a witness in response to formal questioning. It may be recorded, summarized, and/or transcribed verbatim. Sworn testimony is obtained from a witness who has taken an oath or affirmation to tell the truth. Unsworn testimony is obtained from a witness who has not taken an oath or affirmation to tell the truth. Normally, only properly sworn witness testimony will be used.

Third-Party Complainant – An individual who makes a complaint on behalf of another individual against the City of Montgomery or a City employee.

Thoroughness – A clear and concise reflection of all pertinent issues and information relating to the investigation of facts. Reports of Investigation must not raise unanswered questions or leave matters open to question, debate, or misinterpretation.

Timeliness – Conducting investigation operations with due diligence within the timelines described in this instruction.

Unlawful Communication – Any communication, whether verbal, written, or otherwise transmitted, that constitutes misconduct or a violation of law or other criminal statutes. Such examples include (but are not limited to): knowingly making false statements, unauthorized disclosure of private or confidential information, obscene statements, or threatening statements.

Unlawful Discrimination – Discrimination on the basis of color, natural origin, race, religion, gender, disability, or age that is not authorized by law or regulation.

Unsubstantiated Finding – An "unsubstantiated" finding results when a preponderance of the evidence supports the conclusion that the alleged wrongdoing

did not occur, or the facts indicate that no violation occurred. In addition, if there are insufficient facts to support a preponderance of evidence, the result will be an unsubstantiated finding.

Waste – The extravagant, careless, or needless expenditure of City funds or the consumption of City property or resources that results from deficient practices, system controls, or decisions.

Witness – Any individual who is interviewed or testifies during the course of a CI investigation.

Workplace Harassment – A form of unlawful discrimination directed toward a victim because of some protected status.

Chapter 5

Forms, Letter, and Formats

This chapter contains example of forms, letters, and formats that will typically be used to complete a CI Case Report. Investigators will follow the examples contained in the following attachments.

NOTE: All correspondence requiring a letter format will be on official City of Montgomery, Office of City Investigations letterhead.

ATTACHMENT 1: CI COMPLAINT FORM

PROCEDURE FOR FILING A COMPLAINT AGAINST AN EMPLOYEE OF THE CITY OF MONTGOMERY

City Investigations is responsible for conducting investigations into certain actions by employees of the city upon a complaint being filed. If you have a complaint concerning an employee of the City of Montgomery, please complete the attached form and send it to the address listed on the complaint. Upon receipt, action will begin on the investigative process. Your complaint will be assigned to an investigator who will determine the type of inquiry into the situation. You should be aware that evaluation of your complaint may take several weeks. It is our policy that inquiries are conducted on a confidential basis. This is done to protect the integrity of the investigation and to protect the personal privacy of persons to whom unfounded charges may be made. You may be contacted for further information and/or to come to the office to give a statement. Thank you for submitting your complaint. *Note: Complaints not reported within 60 (sixty) days of an alleged incident will not be investigated unless approved by the City Investigations Director.*

SOME TIPS ON PREPARING A WRITTEN COMPLAINT

1. PRESENT THE EVENTS IN THE ORDER IN WHICH THEY HAPPENED, USING DATES WHENEVER POSSIBLE.
2. ENCLOSE COPIES OF DOCUMENTS, PAPERS, NOTES, OR OTHER DOCUMENTS WHICH SUPPORT YOUR CLAIM. ***KEEP ORIGINALS FOR YOUR FILES.***
3. REMEMBER THAT YOUR COMPLAINT SHOULD DESCRIBE THE EVENT WHICH YOU BELIEVE WAS A POSSIBLE VIOLATION.
4. PLEASE COMPLETE THE COMPLAINT FORM AND RETURN IT TO OUR OFFICE. OUR ABILITY TO INVESTIGATE YOUR COMPLAINT AND TAKE PROPER ACTION WILL DEPEND UPON YOU GIVING US A COMPLETE AND DETAILED STATEMENT.
5. GIVE YOUR NAME, ADDRESS, TELEPHONE NUMBERS, AND ANY OTHER CONTACT INFORMATION SO WE CAN CONTACT YOU AS NEEDED.

DELIVER YOUR COMPLAINT TO:

OFFICE OF CITY INVESTIGATIONS
CITY OF MONTGOMERY
300 WATER STREET
SUITE 214
MONTGOMERY, AL. 36104

COMPLAINT FORM

TODAY'S DATE: _____ INTERVIEW DATE/ INV.: _____

(*For office use only*)

YOUR NAME: _____ TELEPHONE NUMBER: _____

CELL PHONE NUMBER: _____ E-MAIL: _____

ADDRESS: _____

BEST TIME TO CONTACT YOU: _____

MAILING PREFERENCE (*please check one*): ☐ E-MAIL ☐ U.S. MAIL

CITY EMPLOYEE'S NAME: _____

CITY DEPARTMENT WHERE EMPLOYEE WORKS: _____

DATE OF INCIDENT: _____ TIME OF INCIDENT: _____

PLACE OF INCIDENT: _____

BRIEFLY DESCRIBE INCIDENT: _____

_____

_____

_____

_____

(ATTACH ADDITIONAL SHEETS AS NECESSARY OR COMPLETE ON BACK OF PAGE)

DOES AN ATTORNEY REPRESENT YOU IN THIS MATTER? _____

IF YES, PLEASE GIVE HIS/HER NAME AND ADDRESS: _____

_____

HAVE YOU BEGUN ANY LEGAL ACTION AGAINST THIS PERSON OR DEPARTMENT?

IF SO, PLEASE DESCRIBE: _____

_____

ARE YOU WILLING TO SIGN AN AFFIDAVIT OR COMPLAINT AGAINST THE PERSON YOU NAMED IF REQUESTED: _____

SPECIFY OTHER GOVERNMENTAL AGENCIES CONTACTED:

_____

DID YOU TAPE RECORD OR VIDEO TAPE ANY OF THE CONVERSATIONS OR ACTIONS DESCRIBED IN THIS COMPLAINT? _____ IF SO, ARE YOU WILLING TO PROVIDE A COPY TO THIS DEPARTMENT UPON REQUEST? _____

NAMES, ADDRESSES AND TELEPHONE NUMBERS, OF ANY WITNESSES TO THE INCIDENT:

_____

_____

_____

_____

I HEREBY SWEAR OR AFFIRM UNDER THE PENALTY OF PERJURY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF. SHOULD I PROVIDE FALSE INFORMATION OR MAKE FALSE ACCUSATIONS, THE LEGAL DEPARTMENT MAY TAKE APPROPRIATE LEGAL ACTION AGAINST ME.

_____ _____

SIGNATURE DATE

SWORN TO AND SUBSCRIBED BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS THE _____ DAY OF _____, 20___.

_____

NOTARY PUBLIC MY COMMISSION EXPIRES _____

Return completed form to:

OFFICE OF CITY INVESTIGATIONS
CITY OF MONTGOMERY
300 WATER STREET
SUITE 214
MONTGOMERY, AL 36104

ATTACHMENT 2: CI COMPLAINT ANALYSIS AND PLAN OF ACTION

OFFICE OF CITY INVESTIGATIONS
CITY OF MONTGOMERY

COMPLAINT ANALYSIS AND INVESTIGATION PLAN

FOR OFFICIAL USE ONLY

DATE: Month/Day/Year
FROM: Investigator ---
CASE: 19-CI-###
SUBJECT: Department/Title/Name/ID Number

Subject Work Status: Full Duty/Unrestricted/Temporarily Reassigned/Leave pending Inv.

1. Normal Assignment: Division/Sector/Shift/Etc.
2. Normal Off Days:
3. Hire Date:

Origin of Complaint & Date: E-mailed/Mailed/Walk-In/Department Request/Anonymous

Complainant & Preferred Contact:

Allegation(s): Date/Time/Location/on or off-duty/Violation/etc.

Preliminary Evidence Reviewed:

1. Potential Policy Violated with Effective Date [typically Exhibit #1]
2. Any Additional – Video Evidence, Documents included with Complaint/Previously Completed Memorandums or statements/Dispatch Records/etc. [Exhibits #2, #3, #4, etc.]

Preliminary Action Taken:

1. Brief inquiry Interviews/Requests for information/Status Checks/Messages Left/Video Request Forms emailed/Etc.

Additional Witnesses and/or Evidence anticipated:

1. Independent Witnesses/Co-workers/etc.

2. Official Records/New World Dispatch Logs/Police Case Details/Body-Camera/Dash Camera/Photographs/etc.

OFFICE OF CITY INVESTIGATIONS
CITY OF MONTGOMERY

CASE PLAN OF ACTION
FOR OFFICIAL USE ONLY

DATE:
TO: Investigator Name /Case File
CASE: 20-CI-###

- ✓ Based on the complaint and preliminary evidence reviewed, this complaint will be categorized as a City Investigations Case and investigated accordingly.
- ✓ Based on the complaint and preliminary evidence reviewed, this complaint will be categorized as a Legal Case and investigated accordingly. The case information will be treated as privileged.
- ✓ Based on _____ this case will be temporarily held until ____ without assignment pending_____.
- ✓ Based on the complaint and preliminary evidence reviewed, this complaint does not meet the qualifications outlined in the City Investigations Handbook to be investigated by this office and therefore will be transferred to _____ for the appropriate action.
- ✓ Based on the information reviewed, there is no evidence to support violation of any policy at this time, and, therefore, the allegation is UNFOUNDED. This case is concluded subject to further requests and/or discovery of additional evidence.

On behalf of the Mayor, City of Montgomery, you are hereby appointed to conduct an investigation into allegations that XXXX. (See attached reports.)

You are authorized to interview personnel, take sworn statements, obtain relevant written information, and examine and copy relevant records. Those records, files, and correspondence written or electronically stored relative to this matter under investigation will be made available to you in accordance with state law, Federal privacy laws, and attorney work product rules.

You must keep the information of this investigation confidential. You may not at any time release any information included in this case without approval of the Director, Office of City Investigations and/or the City Legal Department.
Please submit your completed case file by XXXX.

Bill Barousse
Director of City Investigations

Legal Review:

_____ **Date:**_____/_____/_____

ATTACHMENT 3A: CABINET CI & LEGAL NOTIFICATION LETTER

CONFIDENTIAL MEMORANDUM
VIA HAND DELIVERY ONLY
FOR OFFICIAL USE ONLY

Date: Date
To: Cabinet Member, Department Head
Dept.: Cabinet, Department
RE: Notification of Investigation: **Case Number**

We will be conducting an investigation for the Legal Department concerning _____.

The fact that allegations have been made is not to be construed as proof of wrongdoing. An independent investigator has been appointed to determine the facts and circumstances surrounding the allegations and report the findings.

You will be apprised of the findings upon completion of the investigation through our report. When the Report of Investigation is complete, you may request a copy of any information in our file if necessary.

When the Report of Investigation is complete, it will be provided to the Legal Department. You may request a copy of any information in the file through the Legal Department.

Please inform the officer/employee who is the subject in this investigation that City Investigations will make contact for the necessary arrangements and collect sworn testimony. Also ensure the officer/employee understands the following points:

OR

Please inform the officers/employees who are the subjects in this investigation that City Investigations will make contact for the necessary arrangements and collect sworn testimony. Also ensure the officers/employees understand the following points:

OR

At this time, we are unaware of the officer/employee involved. When we determine the officer/employee involved, City Investigations will inform the department head of the subject in this investigation and make contact for the necessary arrangements and collect sworn testimony. Also ensure the officer/employee understands the following points:

OR

At this time, we are unaware of the officers/employees involved. When we determine those officers/employees involved, City Investigations will inform the department head of the subjects in this investigation and make contact for the necessary arrangements and collect sworn testimony. Also ensure the officers/employees understand the following points:

1. Do not attempt to identify the names of the complainant or witnesses. The CI system is designed to be confidential and to protect the identity and privacy of all individuals involved in the investigation. Any action to talk to witnesses or the complainant may give the appearance of improperly influencing the witnesses or reprising against the complainant. The subject must maintain confidentiality and permit our office to do its job in this matter.
2. Any attempt to interfere with the investigation, testimony, or evidence could have more serious consequences than the alleged wrongdoings.
3. To preclude compromise of the initial fact finding, subjects, complainants, and witnesses will not discuss the circumstances of the allegations or testimony with anyone except the CI staff or their legal counsel if they seek legal advice.
4. The subject(s) can expect that:
    a. The investigator will gather facts and interview witnesses.
    b. The subject(s) will be interviewed last.
    c. The subject(s) will be notified whether the allegations were substantiated or unsubstantiated by their department head or supervisor. (remove if legal)

The investigation is being conducted in anticipation of litigation and therefore any interviews, statements, evidence, or other material gathered are to be considered attorney work-product and therefore attorney-client privileged.

The City Legal Department will determine if portions of the investigation, documentation, or interviews may be privileged or attorney work-product. The investigation may be in anticipation of litigation and therefore any interviews, statements, evidence, or other material gathered may be considered attorney work-product and therefore attorney-client privileged.

Please make any witnesses deemed necessary for interviews and any documentary evidence, recordings, videos, or other requested evidence available upon request.

Thank you in advance for your consideration.

BILL BAROUSSE
Director of City Investigations

ATTACHMENT 3B: CABINET CI NOTIFICATION & TRANSFER LETTER

CONFIDENTIAL MEMORANDUM

VIA HAND DELIVERY ONLY

FOR OFFICIAL USE ONLY

Date:
To:
Dept:
RE: CI Investigation Notification and Transfer **(Case Number)**

City Investigations received a complaint alleging that _____.

We have reviewed this complaint, and we believe the _____ department is the appropriate department to look into this. I have enclosed a copy of the complaint for your review and consideration.

Please send a report to our office after you have completed your action. Let me know as soon as possible if you wish for CI to do a separate investigation.

Thank you in advance for your assistance.

BILL BAROUSSE
Director of City Investigations

ATTACHMENT 3Bi: DIRECT SUPERVISOR TRANSFER LETTER

CONFIDENTIAL MEMORANDUM

VIA HAND DELIVERY ONLY

FOR OFFICIAL USE ONLY

Date:
To:
Dept:
RE: CI Investigation Notification and Transfer **Case Number**

City Investigations recently received this complaint alleging_____.

We have reviewed this complaint, and we believe the _____ is the appropriate department to look into this.

Please send a report to our office after you have completed your action. Let me know as soon as possible if you wish for CI to do a separate investigation.

Thank you in advance for your assistance.

Bill Barousse
Director of City Investigations

ATTACHMENT 3C: CABINET CI NOTIFICATION & RESULTS LETTER IF UNFOUNDED

CONFIDENTIAL MEMORANDUM

VIA HAND DELIVERY ONLY

FOR OFFICIAL USE ONLY

Date:
To:
Dept:
RE: CI Investigation Notification and Unfounded Results **(Case Number)**

City Investigations received a complaint alleging that _____.

Initial investigation of preliminary evidence has discovered no wrongdoing or violation of policy. The allegations are unfounded, and the case has been closed.

Subject Name has not formally been notified of this investigation. You may share that an investigation has been conducted and has been deemed unfounded. You may request a copy of any information from our file if necessary.

BILL BAROUSSE
Director of City Investigations

ATTACHMENT 3D: CASE CONVERSION LETTER

CONFIDENTIAL MEMORANDUM

VIA HAND DELIVERY ONLY

FOR OFFICIAL USE ONLY

Date:
To: Case File
RE: Case Conversion **(Case Number)**

Based on (information/testimony/data, etc.) discovered during the investigation of (XX-CI-XX) this case has been converted to a Legal case with a new case number of (XX-LD-XXX).

Bill Barousse
Director of City Investigations

CC: Cabinet Member

ATTACHMENT 3E: CABINET CLAIM NOTIFICATION LETTER

CONFIDENTIAL MEMORANDUM

VIA HAND DELIVERY ONLY

FOR OFFICIAL USE ONLY

Date:
To:
Dept:
RE: Name – Claim against the City of Montgomery, Claim #2020-XXX

On request of the Legal Department, City Investigations is investigating a claim filed by _____ alleging _____.

We are investigating this incident to determine the extent, if any, of the City's liability. This investigation is being conducted in anticipation of litigation as a claim has been filed with the City Clerk. Therefore we are investigating on behalf of the Legal Department and therefore any interviews, statements, evidence or other material gathered are to be considered attorney work product and therefore attorney/client privileged. Any requests by your department for information regarding this matter should be requested through the Legal Department.

Please make any witnesses deemed necessary for interviews and any documentary evidence, recordings, videos, or other requested evidence available upon request.

Thank you for your assistance.

BILL BAROUSSE
Director of City Investigations

ATTACHMENT 4A: CITIZEN WITNESS FORM

CITIZEN WITNESS ACKNOWLEDGEMENT FORM
RIGHTS ADVISEMENT

You are about to be interviewed concerning an issue being investigated by the Office of City Investigations, Montgomery, Alabama. The information you provide will be recorded and used for the purposes of an official investigation. You CANNOT be compelled to provide information. Your statements are VOLUNTARY.

You are NOT suspected by this office of any criminal offense relating to this investigation under state or local law. You are authorized to have legal counsel present. However, if you knowingly provide false information, the City of Montgomery may take any appropriate legal action against you

We request that you not discuss this interview as we want to conduct an impartial and truthful investigation and produce a report that does not have a possible fabrication or alignment of testimony.

Please answer all questions truthfully and completely. We request that you do not discuss our conversation with any other person other than your attorney. Report any attempt to coerce you to disclose such information or any reprisal to us immediately.

1. I acknowledge that I have been informed that I am a witness in an internal investigation. This investigation concerns: _____

   _____

2. I agree to truthfully answer all questions specifically related to this issue being investigated and acknowledge under penalty of perjury that my answers are truthful to the best of my knowledge, information, and belief.

3. I acknowledge that this investigation is confidential. I understand I cannot record this interview.

I hereby agree under penalty of perjury that I will answer all questions truthfully and that I will voluntarily provide all of the information and answers to questions by the Office of City Investigations. I swear and affirm under penalty of perjury that the information I am about to give is the truth, the whole truth, and nothing but the truth. I agree to immediately supplement any information with City Investigations with corrective or clarifying information or information to make answers more complete or accurate.

Signature: _____ Date _____
Witnessed by: _____ Date _____

ATTACHMENT 4B: EMPLOYEE ACKNOWLEDGEMENT FORM

EMPLOYEE ACKNOWLEDGEMENT FORM

RIGHTS ADVISEMENT

At this time, you **are NOT** suspected of any criminal offense under state or local law. Therefore, you are not authorized to have legal counsel present.

You are not to discuss this interview as we want to conduct an impartial and truthful investigation and produce a report that does not have a possible fabrication or alignment of testimony.

It is required that you answer all questions truthfully and completely. You will also not discuss our conversation with any other person, including your department head or supervisor, until our report has been submitted. Failure to follow these instructions may result in severe consequences, up to and including termination. You must report any attempt to coerce you to disclose such information or any reprisal to us immediately.

1. I acknowledge that I have been informed that I am a witness in an internal investigation. This investigation concerns: _____.
2. I acknowledge my responsibility to answer truthfully all questions specifically related to the performance of my official duties and that I will identify all evidence and witnesses with knowledge of the matter. I will notify City Investigations if I remember any additional testimony, evidence or witnesses with knowledge of the matter.
3. I acknowledge that this investigation is confidential, and I am hereby ordered not to disclose any information discussed during this interview with any person, including my supervisor or department head.
4. I acknowledge that if I interfere with this investigation, or fail to tell the truth, I will be subject to severe consequences, up to and including termination of employment. I further acknowledge that any violations mentioned above will be reported to my department head and/or supervisor for appropriate disciplinary action.
5. I acknowledge that I am prohibited from recording this interview.
6. I will promptly report any harassment and/or retaliation against me to CI.
7. I have no objection to the person interviewing me and feel that he/she will be fair and objective.

I swear and affirm under penalty of perjury that the information I am about to give is the truth, the whole truth, and nothing but the truth. I agree to immediately supplement any information with City Investigations with corrective or clarifying information or information to make answers more complete or accurate.

Signature: _____ Date _____

Witnessed by: _____ Date _____

ATTACHMENT 4C: GARRITY WARNING FORM

ACKNOWLEDGMENT OF RIGHTS

(*GARRITY* WARNING)

This is to advise you that you are being questioned as a part of an official City of Montgomery administrative investigation. You will be asked questions directed and related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the United States including the right not to be compelled to incriminate yourself.

You are further advised that if you refuse to cooperate or answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges and disciplinary action including, but not limited to, dismissal from employment with the City of Montgomery.

What this means is that while neither your statements or any information or evidence, which is gained by reason of such statements, can be used against you in any subsequent criminal proceeding, these statements may be used against you only in relation to subsequent departmental charges, such as, but not limited to, perjury or obstruction of justice.

I swear and affirm under penalty of perjury that the information I am about to give is the truth, the whole truth, and nothing but the truth. I agree to immediately supplement any information with City Investigations with corrective or clarifying information or information to make answers more complete or accurate.

Date _____ Employee _____

Date _____ Print Name _____

Time_____ Witness_____

☐ Employee refused to sign.

*This form is derived from the legal precedent established by *Garrity v. State of N.J.*, 385 U.S. 493

ATTACHMENT 4D: INTERVIEW READ-IN SCRIPT

EMPLOYEE & CITIZEN READ IN SCRIPT

Today's date is_____, the current time is_____. I am CITY INVESTIGATOR_____. The location of this interview is (the Office of City Investigations located at 300 Water Street, suite 214, Montgomery, Alabama.) This interview is being conducted ON BEHALF OF THE MAYOR, for CI case number _____. This is an administrative investigation. It is not a Montgomery Police Department investigation or an investigation conducted for any law enforcement activity. Please state your name for the record_____.

If applicable, you may also ask for:
Department:
Position:

Proceed with questions necessary to obtain all direct knowledge of the matters under investigation.

Preliminary Subject Read-In

My name is _____. I have been appointed by the Office of City Investigations to investigate allegations that you may have _____ (read all allegations.) If you desire, during this interview, you may comment on this information to give your side of the story. You may also show me evidence to contradict or explain allegations.

During the course of this interview, I will ask you to furnish information about yourself. Your testimony will be recorded and all or portions transcribed so that a written report can be made available to the appropriate department head _____ (name of department head.)

Please answer each question verbally, since the tape recorder cannot pick up any nods or gestures. Additionally, all of your statements will be on-the-record, whether the tape recorder is turned on or not.

ATTACHMENT 4E: INTERVIEW READ-OUT SCRIPT

CITIZEN READ OUT SCRIPT

At the conclusion of the interview, the investigator will ask:

Do you have any further information, statements, or evidence, which you wish to present concerning the matters we have discussed?

Do you have any questions about our investigation and reporting process?

EMPLOYEE READ OUT SCRIPT

This is an official investigation. It is protected in the sense that my Report of Investigation will be made to the CI Director who will provide it City authorities for such use as deemed appropriate.

Employees are directed not to divulge the nature of this investigation or the questions, answers, or discussions included in this interview with anyone except or your counsel (if you have one) unless authorized to do so by the Director, Office of City Investigations. Failure to follow these instructions could result in severe legal penalties, up to and including termination.

If anyone should approach you regarding your testimony or the matters discussed here, you are required to report it immediately to our office.

As the investigating officer, I am prohibited from providing a copy of your testimony to you. However, you may submit a request in writing for your testimony or any part thereof to the CI Office or the City Legal office. The release authority will evaluate your request under Public Records laws and attorney client privilege/work product, and provide the releasable information to you. You may submit additional relevant information for my consideration, but if you wish me to consider the additional information before my investigation closes, I must receive that information on or before _____ (insert date.)

Do you have any questions?
The time is _____. This interview is concluded. Thank you.

ATTACHMENT 5A: COMPLAINANT NO RESPONSE LETTER

Date

Name
Street Address
City, State, Zip

Name:

I was assigned your Claim Case on date, since that time, I have made contact with you on four different occasions at 531-0099 and have set up a meeting on January 9, 2020 at 01:00 p.m. and again on January 10th for 10:30 a.m., which you did not shown up for. As stated in earlier conversations, I have to meet with you and take a recorded statement for your case file to move forward.

Please contact me at (334) 625-2492 as soon as possible. You have until Tuesday, January 21, 2020 at 5:00 p.m. to contact this office and set up an appointment, or your claims case will be closed for lack of participation. If you do not wish to be interviewed regarding your complaint, please contact me to let me know. If you do not respond to this request by Tuesday, January 21, 2020, I will know that you decided not to pursue this claims case any further, and I will close this investigation.

_____
Investigator Name
City Investigations, City of Montgomery
Work # (334)-625-

ATTACHMENT 5B: COMPLAINANT ATTORNEY LETTER

Date

Attorney name
Address
City, State Zip

Attorney Name:

The Office of City Investigations is investigating a complaint filed by you on behalf of Mr. Citizen. Please contact our office at (334) 625-2490 between the hours of 8:00 am and 5:00 pm, Monday through Friday, to address this claim. I request you provide this office any additional information that is relevant to this complaint (Medical records, etc.).

If we have not heard from you by Friday, March 20, 2020, we will write our report based on the information we have.

Sincerely,

Bill Barousse
Director of City Investigations

ATTACHMENT 5C: VIDEO REQUEST FORM

VIDEO REQUEST FORM

Date: _____

Time: _____

REQUESTERS INFORMATION

Name: _____ Rank: _____ ID# _____ DIV: _____

Agency: _____ Address: _____

Phone Number: ( ) _____

REQUESTED VIDEO FROM

☐ Draeger Room Time of Draeger Test _____ Date of Draeger Test _____

☐ Vehicle

Vehicle number video requested from: _____ Number of copies requested: _____

Date of Video: _____ Approximate time of day of video: _____

Brief Description of Video Reqeusted:

REQUESTED VIDEO PURPOSE

☐ Municipal Court ☐ Juvenile Court ☐ Duecus Tecum _____ Subpoena Number

☐ District Court ☐ Administrative

☐ Federal Court ☐ Investigation

☐ Circuit Court ☐ Other _____ Specify

ADMINISTRATIVE USE ONLY

Date Video Retrieved: _____
Video retrieved by: _____ ID# _____
Signature: _____ Date: _____

Video turned over to: _____ ID#: _____
Signature: _____ Date: _____

Video copied to: ☐ CD ☐ DVD Number of Copies _____

ATTACHMENT 5D: POLYGRAPH REQUEST MEMO

FOR OFFICIAL USE ONLY

Date: January 10, 2020

MEMORANDUM FOR: Director Ken Nixon

SUBJECT: Polygraph Request for *** ********

FROM: Director Bill Barousse

On behalf of the Mayor, City of Montgomery, and in accordance with City Investigations Handbook, Page 45, Polygraph Examinations, Paragraph 2, I request that **** ****** be directed to complete a polygraph examination. Questions asked during this polygraph session will be related only to City Investigations Case #20-CI-*** and will remain confidential and be protected under Attorney-Client rules.

Please notify the employee directed to participate in a Polygraph exam that the following actions will be adhered to:

- Refrain from alcohol for 24 Hours prior to testing.
- Continue all medications prescribed by a physician.
- 8 hours of rest prior to testing.

City Investigations will coordinate to schedule the polygraph examiner and will schedule **** ****for January 16, 2020, at 0900 hours.

APPROVED/DISAPPROVED

_____ **Date**_____

Ken Nixon Court Administrator

This document will not be released, reproduced, or given additional dissemination, in whole or part, outside CI channels without prior approval of the Director of City Investigations.

ATTACHMENT 5E: SUBPOENA FORMAT

SUBPOENA DUCES TECUM

TO: _____
FROM: CITY OF MONTGOMERY OFFICE OF INVESTIGATIONS
DATE: July 16, 2020
RETURN DUE: Date (10 days)

Authority for Subpoena

Act No. 618 of the 1973 Regular Session of the Alabama Legislature provides as follows:

"9.03. Investigations by council or mayor. The council, the mayor, or any person or committee authorized by either of them, shall have power to inquire into the conduct of any office, department, agency or officer of the city and to make investigations as to municipal affairs, and for that purpose **may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine not to exceed $100.00 or by imprisonment not to exceed six months, or both.**"

The Office of City Investigations is a division of the Office of the Mayor of the City of Montgomery, Alabama, and has been authorized by the Mayor to conduct an investigation for which records under your possession and control are needed for completion of the case and the confidential report to be submitted.

You may comply with this Subpoena by producing a copy of the records requested in either of the following ways:

1. Deliver a copy to the Office of the Director of the Department of City Investigations at 300 Water Street, Suite 214, Montgomery, Alabama in person for review; or
2. By mailing a copy of the requested records to the address listed above; or
3. By electronically to the following e-mail address _____.

Please place the term "Confidential and for Official Use Only" on the outside of the envelope if mailed.

The information requested is as follows:

I am requesting any and all information associated with the following (phone number(s), records, documents, etc.): (inclusive dates). This should include, but not limited to: (explain/detail specific information needed).

Submitted and served by (Investigator's Name) on this the _____ day of (month) (year) by, Director of the Office of City Investigations.

Documents must be received by the close of business on (date).

_____

Name
Director, Office of City Investigations

Sworn to and subscribed before me by (Director's name), who is known to me, on this the _____ day of (month, year).

_____

NOTARY PUBLIC

My Commission Expires:_____

ATTACHMENT 5F: VEHICLE CHECKLIST REGARDING CLAIMS

CITY INVESTIGATOR'S CHECKLIST/GUIDE: ALLEGED VEHICLE DAMAGE(S)

	1 Photograph of Vehicle Registration ***(Does it match claimant?)***	
	1 Photograph of VIN plate (Located by dash/front windshield)	
	1 Photograph of Driver Door Decal (Contains OEM wheel/tire size)	
	1 Photograph of license plate	
	1 Photograph of Insurance Card ***(Has a claim been filed?)***	
	1 Photograph of each wheel/tire (Up close to show brand/size)	
	1 Photograph of Odometer reading	
	4 Photographs of vehicle (1 for each side of vehicle)	
	Photograph of what caused damage & location ***(Google Maps?)***	
	Verify Proper tire/wheel size/type with OEM recommendation ***(Are the wheels aftermarket?)***	
	Quote Owner's manual if incorrect size is used	
	Check Collision Report(s)	
	Ask About Previous Damage or Vehicle Modifications	
	KBB & NADA "Book Value"	
	Paving History & "311" requests ***(6 Month History?)***	
	Identify Who Maintains Area (City/County/State/Private Property)	

CASE#_____ Investigator:_____

ATTACHMENT 5G: CASE PROGRESS REPORT MEMO

CONFIDENTIAL MEMORANDUM

FOR OFFICIAL USE ONLY

Date:
To: Director Bill Barousse
From: Investigator
RE: Progress Report **Case Number**

1. Complainant's and subject's name:
2. Date complaint initially received by CI:
3. Date case assigned:
4. Status of investigation:
5. Summary of investigation to date: (*brief summary of interviews, document reviews, and any pertinent information obtained by the examination*):
6. Status of case: (e.g. under investigation, in legal review, etc.)
7. Reason for delay in completing case: *(Be specific)*
8. Final action(s) to be completed:
9. Expected completion date:

_____ _____

INVESTIGATOR **DATE**

RELEASE OF THIS DOCUMENT TO ANY OTHER PERSON MUST BE APPROVED IN WRITING BY DIRECTOR, OFFICE OF CITY INVESTIGATIONS

ATTACHMENT 5H: CASE EXTENSION REQUEST MEMO

CONFIDENTIAL MEMORANDUM

FOR OFFICIAL USE ONLY

Date:
To: Director Bill Barousse
From: Investigator
RE: Case Extension Request **Case Number**

Sir, I am respectfully requesting an extension on case _____ involving _____ until DATE.

The original due date for this case was DATE.

Bill Barousse
Director of City Investigations _____Approved _____Disapproved

Cc: Cabinet Member

ATTACHMENT 6Ai: ROI CI COVER SHEET

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CONFIDENTIAL

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If the reader of this report is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that dissemination, distribution, or copying of this report is strictly prohibited and may result in severe penalties, up to and including termination.

If you have received this report in error, please immediately return it to the Office of City Investigations.

DO NOT COPY

FOR OFFICIAL USE ONLY

CONFIDENTIAL

Do Not File
Return to City Investigations
By Date

ATTACHMENT 6Aii: ROI CI

FOR OFFICIAL USE ONLY

Office of City Investigations
City of Montgomery, Alabama
REPORT OF INVESTIGATION

Case Number:

PREPARED FOR: Office/Department

TO: Department Head/Supervisor

SUBJECT(S): Name of Individual (s)

Legal Review _____ Date: _____

APPROVED BY: _____ Date: _____
Director Bill Barousse

This is a protected document. Unless otherwise indicated, the information contained in this report is confidential. It will not be released (in whole or in part), reproduced, or given additional dissemination (in whole or in part) without permission from the Director, Office of City Investigations, and/or the City Legal Department.

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FOR OFFICIAL USE ONLY

REPORT OF INVESTIGATION

Case No. 20-CI-***

Section I, Tab A -- Authority and Scope:

Legal authority for this investigation is delegated on behalf of the Mayor, City of Montgomery, to the Director, Office of City Investigations, based on the Mayor's responsibilities dictated in Act 618. Sec 9.03 of Act 618 which is the legal authority for the City states:

"Investigations by council or mayor": "The council, the mayor or any person or committee authorized by either of them shall have power to inquire into the conduct of any office, department, agency or officer of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by fine not to exceed $100 or by imprisonment not to exceed six months, or both."

Section I, Tab B – Appointment Authorization:

Acting on behalf of the Mayor, City of Montgomery, the Director, Office of City Investigations, appointed CI Investigator _____ on _____(date of appointment), to conduct an investigation into allegations that _____ (name of subject) has violated City policy.

Section II – Background and Allegations:

Origin of Complaint Date: E-mailed/Mailed/Walk-In/Department Request/Anonymous

Subject Work Status: Full Duty/Unrestricted/Temporarily Reassigned/Leave pending Inv.

4. Normal Assignment: Division/Sector/Shift/Etc.
5. Normal Off Days:
6. Hire Date:

Allegation Summary:

Alleged Policy Violation 1:

Alleged Policy Violation 2:

Section III – Interviews and Investigative Review of Evidence

Interviews:

The following individuals were interviewed regarding the allegations:

1. Complainant/Witness #1: (Name, date interviewed)
2. Witness #2: (Name, date interviewed)
3. Witness #3: (Name, date interviewed)
4. Subject of Investigation: (Name, date interviewed)

Summarized Interview with [complainant's name]:

On [date], [name] was interviewed by the Office of City Investigations….

Summarized Interview with [witness' name]:

On [date], [name] was interviewed by the Office of City Investigations….

Summarized Interview with [subject's name]:

On [date], [name] was interviewed by the Office of City Investigations….

Investigative Review of Evidence:

Section IV – Analysis and Conclusion:

SECTION V – Findings [Regarding Policy]:

Finding #1

It is alleged that [employee's name] violated [Policy]. This allegation is **SUBSTANTIATED or UNSUBSTANTIATED**. This allegation is **UNFOUNDED**. The circumstances of this investigation have prompted a request for existing **POLICY REVIEW**.

Section VI – Official Forms and Evidence/Exhibits:

Official Forms:

1. Complaint Form: Name, (date)
2. Investigative Analysis and Director's Plan of Action:
3. Notification Letter to [Department]:
4. Citizen Witness Acknowledgment Form: (name/date)
5. Employee Witness Acknowledgment Form: (date)
6. Employee Garrity Warning Form: (date)

Investigative Interviews - testimony/electronic recording/transcript:

1. Complainant/Witness #1: (Name, date interviewed)
2. Witness #2: (Name, date interviewed)
3. Witness #3: (Name, date interviewed)
4. Subject of Investigation: (Name, date interviewed)

All electronic recordings are on file at the Office of City Investigations located at 300 Water Street.

Evidence:

All other pertinent information is on file at the Office of City Investigations located at 300 Water Street.

Summary of Substantiated Findings to be given to the Subject of Investigation

FOR OFFICIAL USE ONLY

Date:
To:
Dept:
RE: Investigative Summary: **Case Number**

The Office of City Investigations conducted an investigation into allegations that _____.

The investigation substantiated the following policy violation(s):

1.
2.
3.

Witness One Testified: **Note: avoid language that would identify a witness. Use generic terms such as "they, them, themselves, told others that…etc. Do not use terms like "he, she, Wanda, Fred, etc."**

Witness Two Testified:

[Name of subject] Testified:

[Name of subject] Admitted:

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ATTACHMENT 6Aiii: CI INVESTIGATIVE SUMMARY

FOR OFFICIAL USE ONLY

Date:
To:
Dept:
RE: Investigative Summary: **Case Number**

The Office of City Investigations conducted an investigation into allegations that _____.

The investigation substantiated the following violations for _____:

1. **Allegation 1:** In violation of

Include testimony of all witnesses without using actual names. For example:

One witness stated _____.

Another witness stated_____.

The investigation revealed that_____. (Summary of facts)

The subject (use subject's name) stated that_____. (Summarize or quote the subject's testimony.)

Finally, include any additional factual information, (i.e. summary of worksheets, computer data, etc.) not contained above.

Do not include the "Findings" from the actual Report of Investigation

Bill Barousse
Director of City Investigations

This document will not be released, reproduced, or given additional dissemination, in whole or part, outside CI channels without prior approval of the Director of City Investigations.

ATTACHMENT 6Aiv: CI EXECUTIVE SUMMARY

FOR OFFICIAL USE ONLY

Date:
To:
Dept:
RE: Executive Summary: **Case Number**

Note: Executive summary will be used for the Mayor and legal cases where findings are required.

The Office of City Investigations conducted an investigation into allegations that _____.

The investigation substantiated the following violations for _____:

1. **Allegation 1:** In violation of

Summary

Conclusion:

This section is a listing and restatement of each allegation concluding with: SUBSTANTIATED or UNSUBSTANTIATED.

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ATTACHMENT 6Bi: ROI LEGAL & CLAIM COVER SHEET

FOR OFFICIAL USE ONLY

REPORT OF INVESTIGATION

CASE NUMBER: _____

PREPARED AND SUBMITTED BY:

CITY INVESTIGATIONS

CITY OF MONTGOMERY, ALABAMA

CONFIDENTIAL

ATTORNEY CLIENT WORK PRODUCT

LEGAL WORK PRODUCT

Date:

This is a protected document. It will not be released, reproduced, or given additional dissemination, in whole or part, outside CI channels without prior approval of the Director of City Investigations.

ANY PERSON READING OR VIEWING THE MATERIALS UNDER THIS COVER MUST BE PROPERLY AUTHORIZED BY THE DEPARTMENT HEAD

ATTACHMENT 6Bii: ROI LEGAL & CLAIM

FOR OFFICIAL USE ONLY
ATTORNEY-CLIENT PRIVLEGED
LEGAL WORK PRODUCT

REPORT OF INVESTIGATION

CASE: 20-LD-*** -or- 2020-XXXX *[Note: add Claimant's name after number]*

PREPARED FOR: Mr. C. Michael McInnish, Senior Staff Attorney

TO: City of Montgomery Legal Department

SUBJECT –or- CLAIMANT'S NAME: *Note: Delete the unused portion.*

Legal Review _____ Date: _____

APPROVED BY: _____ Date: _____
Director Bill Barousse

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REPORT OF INVESTIGATION

Case Number: XXXX

Section I, Tab A -- Authority and Scope:

Legal authority for this investigation is delegated on behalf of the Mayor, City of Montgomery, to the Director, Office of City Investigations, based on the Mayor's responsibilities dictated in Act 618. Sec 9.03 of Act 618 which is the legal authority for the City states:

"Investigations by council or mayor": "The council, the mayor or any person or committee authorized by either of them shall have power to inquire into the conduct of any office, department, agency or officer of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by fine not to exceed $100 or by imprisonment not to exceed six months, or both."

Section I, Tab B – Appointment Authorization on Request of Legal:

Acting on request of City of Montgomery Legal Department, the Director, Office of City Investigations, appointed CI Investigator _____ on _____(date of appointment), to conduct an investigation into a claim filed by ___, or a claim filed by Attorney/law firm ___ on behalf of ___.

Section II – Background and Allegations:

Origin of Complaint Date: City Clerk's Office…Departmental Request…Legal Request, etc.

Claim/Allegation(s): Date/Time/Location/etc.

Section III – Interviews and Investigative Review of Evidence

Interviews:

The following individuals were interviewed regarding the allegations:

1. Claimant/Witness #1: (Name, date interviewed)
2. Witness #2: (Name, date interviewed)
3. Witness #3: (Name, date interviewed)

Summarized Interview with [Claimant's name]:

On [date], [name] was interviewed by the Office of City Investigations…

Summarized Interview with [Witness' name]:

On [date], [name] was interviewed by the Office of City Investigations….

Summarized Interview with [Subject's name]:

On [date], [name] was interviewed by the Office of City Investigations….

Investigative Review of Evidence:

Section IV – Official Forms and Evidence/Exhibits:

Official Forms:

1. Notice of Intent Form (If applicable)
2. Request to Investigate Letter by Senior Staff Attorney C. Michael McInnish [Date]
3. Notice of Investigation Letter to [Department/Date]
4. Claim/Legal Investigator Appointment Letter [Date]
5. Citizen Witness Acknowledgment Form, (Name/date)
6. Employee Witness Acknowledgment Form, (Date)
7. Employee Garrity Warning Form, (Date)

Investigative Interviews - testimony/electronic recording/transcript:

1. Claimant/Witness #1: (Name, date interviewed)
2. Witness #2: (Name, date interviewed)
3. Witness #3: (Name, date interviewed)

All electronic recordings are on file at the Office of City Investigations located at 300 Water Street.

Evidence:

<u>This investigation is concluded subject to further requests.</u>

ATTACHMENT 7: ROI RESULTS TO CABINET

CONFIDENTIAL MEMORANDUM
VIA HAND DELIVERY ONLY
FOR OFFICIAL USE ONLY

Date:
To: Cabinet Member, Department Head
Dept.: Cabinet, Department
RE: Results of Report of Investigation **Case Number**

The Office of City Investigations has completed its investigation concerning _____.

The Report of Investigation has unsubstantiated the allegation/substantiated (a) violation(s)/deemed the allegation unfounded, and it has been sent to the appropriate department for action.

OR (IF CLAIM, TO ONLY CABINET MEMBER)

The Report of Investigation has been submitted to the City Attorney's Office for appropriate action. If you want any information about this report, please contact the Legal Department.

The department head receiving the ROI must inform the subject(s) of the findings, but *do not* share the report with anyone. The report must be treated as Confidential, attorney work-product information. It is complete and has been subjected to a legal review. If you need additional information, you may request a copy of any information in our file.

Please **initial and return** the ROI to the City Investigation's Office no later than fifteen days from the date above.

Bill Barousse
Director of City Investigations

cc: Stacy Lott Bellinger

ATTACHMENT 8: CITIZEN FEEDBACK LETTER

Date

Name & Address:

SUBJECT: Your Complaint filed with C.I. on 1/31/20

Dear Mr./Mrs./Ms._____:

As a result of your complaint concerning_____, an investigation was initiated and completed by this department. The results of the investigation have been presented to senior leadership of the applicable department for further action as may be required. It should be noted that City Investigations does not direct or determine any disciplinary action that may or may not have resulted from this investigation.

Thank you for submitting your complaint through the Office of City Investigations. If you know of anyone who has a complaint or wishes to report wrongdoing, please refer them to our office. Should you have any future complaints, please feel free to contact this office.

Sincerely,

Bill Barousse
Director of City Investigations

ATTACHMENT 9: OFFICIAL CITY INVESTIGATIONS LETTERHEAD

City of Montgomery

OFFICE OF THE MAYOR
CITY INVESTIGATIONS

300 Water Street, Suite 214 | Montgomery, AL 36104
334-625-2490 | cityinvestigations@montgomeryal.gov

ATTACHMENT 10: RECORDS MANAGEMENT AND CONFIDENTIALITY AGREEMENT

CITY OF MONTGOMERY

RECORDS MANAGEMENT AND CONFIDENTIALITY AGREEMENT

All information acquired as a result of employment in City Investigations, including but not limited to case information, information about complaints, and employee information, is to be treated as confidential. If there is any doubt about the sensitive or confidential nature of the information, clarification should be requested from the Director of City Investigations.

All records maintained by the City Investigations, *including computer records, tape recordings and paper documents,* should be handled and maintained *in accordance with department records management and security policies*. Personnel files *and records* must never be left unsecured. The file room should be locked at night.

Only persons specifically authorized by the director should have access to case files.

Your cooperation is required in preserving the confidential nature of City Investigation case files and information by carefully observing the security procedures listed below:

1. **You are personally responsible and accountable** for all City Investigation case files in your possession.
2. **Do not retain any copies or make personal or file copies** of City Investigation case files which you review, revise, construct or administer.
3. **Return all case files and related notes** to the designated City Investigations staff member unless the file is to be filed.
4. **Lock up or secure all City Investigation cases** when you are not directly working with them.
5. **All draft and copies of cases should be shredded** when no longer needed.
6. **Permit no other person to have access to City Investigation cases.**
7. **Do not discuss any aspect of the examination with anyone** who is not a member of the City Investigations staff.

These security procedures apply to any and all **City Investigation cases** with which you assist, or to which you have access, including complaints, case files, reports and all interviews. It is essential that these procedures and any additional ones that are

requested or may be necessary are followed at every stage of preparation, review and administration.

Because of the importance of Investigation security, you should notify the Director of City Investigations if ANY circumstances cause you to believe the confidential nature of the examination has not been maintained.

I have read and understand the above Records Management and Confidentiality Agreement. I understand that failure to follow these procedures may result in disciplinary action up to and including dismissal and legal prosecution if applicable.

_____	_____	_____
Print Name	Signature	Date

Attachment 11: OIS ROI

FOR OFFICIAL USE ONLY

Office of City Investigations
City of Montgomery, Alabama
OIS REPORT OF INVESTIGATION

CASE NUMBER:

PREPARED FOR: Office/Department

TO: Department Head/Supervisor

SUBJECT(S): Name of Individual(s)

Legal Review _____ Date:_____

APPROVED BY:_____ Date:_____
Director Bill Barousse

This is a protected document. Unless otherwise indicated, the information contained in this report is confidential. It will not be released, reproduced, or given additional dissemination, in whole or in part, without permission from the Director, Office of City Investigations, and/or the City Legal Department.

If the reader of this report is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that dissemination, distribution, or copying of this report is strictly prohibited and may result in severe penalties, up to and including termination.

If you have received this report in error, please immediately return it to the Office of City Investigations.

DO NOT COPY

FOR OFFICIAL USE ONLY

REPORT OF INVESTIGATION

Case No. 20-CI-***

Section I, Tab A -- Authority and Scope:

Legal authority for this investigation is delegated on behalf of the Mayor, City of Montgomery, to the Director, Office of City Investigations, based on the Mayor's responsibilities dictated in Act 618. Sec 9.03 of Act 618 which is the legal authority for the City states:

"Investigations by council or mayor": "The council, the mayor or any person or committee authorized by either of them shall have power to inquire into the conduct of any office, department, agency or officer of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by fine not to exceed $100 or by imprisonment not to exceed six months, or both."

Section I, Tab B – Appointment Authorization:

Acting on behalf of the Mayor, City of Montgomery, the Director, Office of City Investigations, appointed CI Investigator _____ on _____(date of appointment), to conduct an investigation into _____.

Section II – Background and Allegations:

Primary Officer(s) Involved:

Additional Officer(s) Involved:

ALEA Investigator:

Involved Person/Persons:

Date of Shooting:

Officer Work Status: Full Duty/Unrestricted/Temporarily Reassigned/Leave pending Inv.

7. Normal Assignment: Division/Sector/Shift/Etc.
8. Normal Off Days:
9. Hire Date:
10. Regular assignment:
11. Regular Hours:
12. Shift Started:
13. Medication Taken:
14. Alcoholic Beverages:
15. Last Slept:
16. Medical Conditions:
17. Eyeglasses Prescribed:
18. Specialized Training:
19. Previous OIS/ICD incidents:
20. Scene Supervisor:
21. Incident Commander:

Staffing:

At the time of the incident, the department was staffed with a total of XXX sergeants and XXX officers. The staffing breaks down as follows:

Officers
Corporals
Sergeants
Lieutenants
Captain
Major

Involved person:

Name:
Aliases:
DOB:
Sex:
Race:
Height:
Weight:

Clothing:
Residence:
Weapon:
Weapon Registration:
Impairment:
Injuries:
Violations that Led to Police Contact:
Violations during Police Contact:
Outstanding Arrest Warrants:
Probation:
Arrest History:

Note: copy and paste additional involved officers as needed.

Allegation Summary: It is alleged on 01/13/2XXX, **Officer John Doe and Officer Jane Doe were involved in a collision that appeared to be staged.**

Alleged Policy Violation 1: In violation of Montgomery Fire Department Rules and Regulations, Article 1, Sec. 217: Conduct themselves in a professional manner as governed in the Code of Conduct and in compliance with all applicable rules, regulations and statues.it is alleged District Chief John Doe **was aggressive and disrespectful towards Chief Johnson.**

Alleged Policy Violation 2: In violation of the 2018 City handbook, Workplace rules of Conduct, gossip regarding individuals, it is alleged District Chief John Dow talked about Chief Johnson in a negative manner.

Scene Summary:

This will include a summary of the scene, exact location, direction, if a foot pursuit occurred, include the current temperature from the location at the time of the incident. Include a scene diagram copy/paste.

Example: Officer Involvement with suspect began at 27th St and southbound Northgate Ave. 27th St is a divided roadway with two lanes of traffic in the eastbound direction and three lanes in the westbound direction. One of the westbound lanes is a left hand turn lane. Northgate is a one-way road with four lanes traveling in a southbound direction. One of the lanes is a dedicated eastbound turning lane.

The foot pursuit went westbound on 27th St for approximately 180 feet and then southbound on Martin Luther King, Jr. Way. Martin Luther King, Jr. Way is a four-lane roadway with two lanes of traffic in each direction.

The officer involved shooting occurred on the sidewalk in front of 2621 Martin Luther King, Jr. Way. This is located on the west sidewalk in front of a structure with two businesses located on the first floor and residential apartments on the upper two stories.

The incident occurred at 1500 hours. The temperature at the time was approximately 78 degrees Fahrenheit. It was during daylight hours with no cloud cover. (accuweather.com)

Incident chronology:

The incident chronology is a timeline of events that occurred on date, in relation to the incident that occurred in the location. The events are listed in sequential order, with each entry having a time of occurrence, a description of the event or action that took place, and the applicable source from which the information was received.

Time	Description of Event / Action	Source

Scene Diagram

Example: Insert a diagram of the scene.

AREA CANVASS

An extensive canvass was conducted for witnesses while units were still on scene. The residences, businesses, citizens on the street, and homeless in the area were canvassed. A total of 36 statements were taken from citizens in the area. CI investigators took statements from four Montgomery police officers.

The civilian witnesses observed different aspects of the incident, from the initial accident at 27th St. and Northgate Avenue to the shots being fired. None of the witnesses were able to identify which officers fired weapons. Their written statements are included as evidence.

The canvass located surveillance cameras at the corner store located at 27th St and Martin Luther King Jr. Way. Video was also obtained from _____. The video was collected, reviewed, and included in the investigative file.

Date and time of contact for each statement an individual.

Section III – Interviews/Statement Summary and Investigative Review of Evidence:

Interviews:

The following individuals were interviewed regarding the allegations:

4. Complainant/Witness #1: (Name, date interviewed)
5. Witness #2: (Name, date interviewed)
6. Witness #3: (Name, date interviewed)
7. Subject of Investigation: (Name, date interviewed)

Summarized Interview with (Complainant's name):

On (date), (name) was interviewed by the Office of City Investigations….

Summarized Interview with (Witness' name):

On (Date), (Name) was interviewed by the Office of City Investigations….

Summarized Interview with (Subject's name):

On (Date), (Name) was interviewed by the Office of City Investigations….

DISCREPANCIES

Example: The following discrepancies where discovered during the course of this investigation and have been based on Watchguard footage, statements, and written statements:

-
-

WITNESSES:

Multiple witnesses were identified and interviewed. The statements provided were consistent. The discrepancy found consistently within these statements was a misidentification of the number of rounds fired during this incident. The number of rounds identified ranges from a single shot up to 15 rounds. There are also accounts of an exchange of gunfire in different locations. Watchguard clearly shows three

officers fired a single volley of fire each and that this volley occurred in just over one second.

Officer J. (1):

Officer (1) believed the suspect vehicle was a carjacking vehicle. The vehicle was actually involved in an armed robbery. He identified the accident as having occurred at 27th St and West Grand Avenue. Later, he identified the location correctly as being at 27th St and Northgate Avenue. And finally, during the foot pursuit, he stated that the suspect had the firearm in his right hand at the start of the foot pursuit. Watchguard video clearly shows that the suspect had the firearm in his left hand for the entire incident.

CREDIBILITY ASSESSMENTS

This investigation conducted credibility assessments on all witnesses, subjects and involved parties. This investigation evaluated their statements compared with evidence, perspective and relationships. Any departmental personnel were also evaluated by a review of their internal personnel records system and complaint history.

CRIMINAL INVESTIGATION REPORT

The Montgomery Police Department/ ALEA completed a separate investigation into this Officer Involved Shooting incident. This investigation reviewed Sergeant _____ report and case notes. His report is consistent with the facts discovered in this investigation and there are no discrepancies between facts discovered between the two investigations.

Coroner's Report

A copy of the State Coroner's Report was obtained. The report listed the primary cause of death as multiple gunshot wounds. The findings specifically identified two injuries resulting from the gunshots that lead to the suspect's death:

- Multiple gunshot wounds with perforation of inferior vena cava, mesentery, small intestine, and lumbar vertebrae.
- Massive hem peritoneum.

There were four entry wounds identified with a total of seven injuries resulting from those gunshots. The autopsy report noted that suspect did not have drugs or alcohol in his system at the time of the shooting.

The report noted four initial contacts with projectiles and one re-entry wound. There were also two exit wounds identified. The injuries were detailed as follows:

1. Right abdomen above navel (9mm)
2. Left groin (.45 cal.) (1)
3. Lower right leg (unknown caliber)
4. Left fifth finger graze (unknown caliber)
5. Re-entry, left forearm (unknown caliber)
6. Exit wound left elbow
7. Exit wound right leg

Suspect was pronounced deceased on 12 Aug 15 at 1526 hours, at Jackson/on site/Hospital by Dr._____.

ASSESSMENT

The use of force must meet criteria set forth within the Constitution, the laws of the State of Alabama, and MPD's departmental policies. In addition to ALEA conducting a criminal investigation, the department conducts an administrative review of the force used. The administrative review reviews training and tactics, and examines why the officers did what they did, with the goal being to obtain the most complete picture possible of what caused events to occur as they did. This analysis begins with CI's response to the shooting scene.

In analyzing this event, CI reviewed the entirety of the criminal investigative file prepared by ALEA, including officer statements, witness statements, diagrams, photographs, and physical evidence reports. CI has studied the policies in effect on the date of the shooting, has reviewed relevant training materials and police practices.

The Administrative Assessment of an Officer Involved Shooting

There is a significant difference between the evidentiary standards that ALEA uses in a criminal review of an Officer Involved Shooting and the standard CI uses in an administrative review. The criminal review process requires a determination of whether there existed legal justification for the officer to use of force under the

circumstances presented. To find wrongdoing on the part of the officer, the DA's office must believe they can prove this beyond a reasonable doubt.

In contrast, the scope of an administrative investigation is much broader and requires a determination regarding whether the officer's actions were in accordance with the department's Use of Force policy and any other applicable rules and regulations in effect on the date of the application of force. The administrative investigation evaluates the evidence using a "preponderance of evidence" standard rather than the criminal "beyond a reasonable doubt" standard.

This assessment is presented in chronological order. Note the Use of Force assessment is presented in the middle of this section, not at the end.

Department Policy & Procedure Review

A goal of the review is to determine if the involved officers complied with policy and procedure. Part of this assessment may include determining whether MPD should revise any policy, procedure, or training. Notably, as part of the investigation, CI also analyzes whether the department policies are being properly translated through training into practice on the street. A list of department publications reviewed for this investigation is listed in Appendix ....

Training Review

A global analysis of tactics and training is an important aspect of the review process. The review should answer the question: Did the officers who acted in a particular incident respond correctly based upon their training?

In addition, a vital theme that should run through the whole review process is, how do we, as an agency, take constructive steps to improve in areas that have been identified as in need of repair or refinement? This is a systematic approach, ensuring that the lessons learned, both successes and failures, are identified and followed up on.

The investigation confirmed that all involved officers received MPD departmental training via basic police academy, PowerDMS and continued professional training. Similarly, all officers qualified with firearms and ECWs as required by policy.

Communications Division Assessment:

Communications Division Policy D-3 states members, *"shall cause all pertinent information to be supplemented in a timely manner to appropriate incidents."*

- In this incident:
  - Dispatch initiated an incident when Officer .... saw the suspect's vehicle.
  - Dispatch added units to the call as the incident progressed.
  - Dispatch broadcast vehicle information and want city-wide.
  - Dispatch patched channels for officer safety and awareness.
  - Dispatch requested code 3 medical for the accident.
  - Dispatch requested code 3 medical for the OIS.
  - Dispatch ensured all perimeter locations were filled.

There were no deficiencies identified during this incident.

Recommendation: None.

Vehicle Pursuit Assessment

This pursuit was reported to and reviewed via the Pursuit Package submitted via the shift captain/supervisor. The following is an overview of the pursuit:

A vehicle pursuit report was completed as required by policy. The pursuit was reviewed via Officer Doe's chain of command. The report determined that officers were not able to engage the suspect vehicle prior to.....

The pursuit review by supervisors found the actions of the involved officers to be in compliance. There were no training recommendations or comments attached to this finding.

Recommendation: None

Detention/Arrest Assessment

Montgomery Police Department Training Procedure:

Probable Cause Defined:

> The level of suspicion which will justify an arrest is known as "probable cause." As a general rule, probable cause exists when an officer is aware of facts which would "lead a person of ordinary care and prudence to entertain an honest and strong suspicion" that the suspect is guilty of a crime.
>
> U.S. Supreme Court stated, "Probable cause is a fluid concept-turning on the assessment of probabilities in particular factual contexts-not readily, or even usefully, reduced to a neat set of legal rules."

Officers first verbally engaged with suspect as he approached the passenger side of the silver Chrysler Sebring at the intersection of 24th St and southbound Northgate Avenue. At this time, they had the following information *(Crime report contains statements and details regarding attempted carjacking)*:

- Suspect had been driving a vehicle associated with an armed robbery.
- Suspect had fled from the police.
- Suspect was involved in a collision.
- Officer (4), (3), and (1) observed suspect was attempting to carjack the Sebring.

At this point, officers had sufficient probable cause to detain and arrest the suspect.

Recommendation: None.

Foot Pursuit Assessment

Montgomery Police Department Training:

> The reverence for human life shall always be the primary consideration. The immediate apprehension of the citizen is never more important than the safety of the public or the officers. A foot pursuit is justified only when the necessity of immediate apprehension or the emergency outweighs the level of danger it presents towards officers, suspects, and the community.

Foot pursuits are an effective way to apprehend a fleeing suspect but are inherently dangerous and require heightened officer safety awareness, common sense, and sound tactics.

A. Officers shall not pursue a suspect who is known or suspected of being armed into a yard, building, structure, confined space, or isolated area where the suspect can gain the tactical advantage unless exigent circumstances exist, or there is an immediate need to defend the life of another person.

B. Pursuing officers shall seek cover/concealment, establish a perimeter, and/or take a perimeter position when an armed suspect commits to running toward a yard or between houses unless exigent circumstances exist, or there is an immediate need to defend the life of another person.

C. An officer must use tactics and techniques that reduce the likelihood of an armed assault from the suspect. Foot pursuits are inherently dangerous; however, tactics can either reduce or increase the risk to the pursuing officer.

In this incident:

- Officers triangulated on the suspect as he ran. (Triangulation is to approach from different angles to divide the suspect's attention and gain a tactical advantage.)
- Suspect did not enter a yard or structure.
- Officers did not lose sight of suspect.
- There were three officers involved in the pursuit.
- The sergeant was calling the pursuit from a vehicle.

Officers were able to stay in close proximity to suspect. Officer (1) followed to the rear of suspect. Officers (4) and (3) remained to the left rear of suspect. Officers had superior numbers and placed themselves in a position where suspect would be required to locate them and then turn to assault them.

The pursuit was in compliance with MPD policy and training.

Recommendations: None

<u>Use of Force Assessment:</u>

Case law regarding the Fourth Amendment of the Constitution establishes the legal aspects regarding the use of force. MPD Power DMS policies governs the use of force by members of the department. MPD uses of force uses *Graham v. Connor* (490 U.S. 386 (1986)) to analyze uses of force under a reasonableness standard as set out by the Supreme Court.

After a review of WATCHGUARD video, surveillance video, witness statements, and officer statements, the investigation determined the following:

Officers observed the suspect driving a white Dodge Charger with AL license plate #7KSU661. The vehicle was listed in MPD report RD# 15-040060 which identified the crime as an armed robbery with two male white suspects. Patrol units attempted to conduct a pursuit of the vehicle, but were unable to get in a position to attempt to stop suspect's vehicle.

Suspect was involved in a vehicle collision at 27th Street and Northgate Avenue with a gray 2011 Mercedes Benz. Suspect fled the accident on foot and approached a silver 2007 Chrysler Sebring with one occupant. Multiple witnesses and officers on scene observed the suspect approach the Sebring and attempt to gain entry to the vehicle. The civilian witnesses (John, Jane and Jerry Doe) and the victim, ____ observed the suspect was holding a firearm at that time. Detailed statements were taken and a crime report was generated to document the attempted carjacking.

Suspect fled from the Sebring with a firearm in his left hand. As the suspect began to run from the Sebring, the magazine fell out of the firearm he was holding and onto the street between the Sebring and another vehicle. This was seen by Officer ____ who were in the vehicle behind the Sebring. Officers (1), (4), and (3) pursued the suspect on foot to the 2600 block of Martin Luther King Jr. Way. Officers (1), (4), and (3) gave multiple commands for suspect to stop and to put down the firearm. All of the officers told suspect to stop and put down the gun. The suspect did not comply with any of the commands. This was observed by witnesses and was captured on WATCHGUARD as the suspect continued to run south on Martin Luther King Jr. Way with the gun in his left hand.

Suspect was running southbound on Martin Luther King Jr. Way when he slipped next to a white mini-van which was parked in front of 2619 Martin Luther King Jr. Way. Suspect got up and began running northbound on the west sidewalk towards officer (1) with the firearm still in his left hand. Once in front of 2621 Martin Luther King Jr. Way, Suspect turned towards officer (1) and raised his firearm towards

officer (1). This is captured on WATCHGUARD. Officers (1), (4), and (3) discharged their firearms at suspect. There were a total of eight rounds fired; Officer (1) fired three rounds, officer (4) fired two rounds, and officer (3) fired three rounds. Suspect then fell to the ground with the gun falling out of his hand per WATCHGUARD video.

It was later determined the suspect's firearm was loaded with a single round in the chamber. Suspect dropped the magazine with additional rounds as he fled from the scene of the attempted carjacking. Officers (1), (4), and (3) were not aware that the magazine was missing from the firearm.

Suspect was struck by four of the rounds. He was struck by a 9mm round to his abdomen, a .45 caliber round to his groin, an unknown round to his right shin which exited the back of his leg, and an unknown round to his left pinky. The round to his pinky grazed his finger, entering suspect's left forearm and exiting near his left elbow.

SUSPECT

The state of Alabama Criminalistics Lab was able to confirm that the casings on scene were fired from the officers' firearms. Officer (1) fired three rounds, one of which struck the suspect. Officer (3) fired three rounds. Officer (4) fired two rounds. Suspect's firearm did not fire any of the rounds located on scene. The lab determined his firearm was functional; however, the fact that there was no magazine in the gun and one round in the chamber shows that he did not fire the weapon. The lab was unable to determine which gun fired the 9mm bullet fragments located on scene.

Four of the eight rounds that officers fired struck the suspect. Strike marks were located for three of the shots that did not strike the suspect. One struck the wall of 2621 Martin Luther King Jr. Way and entered the business. This round was likely fired by either officer (4) or (3). Two struck the fence to the south of 2621 Martin Luther King Jr. Way. Based on Officer (1)'s location closer to 27th Street, it is likely that these rounds were fired by him. This investigation was unable to determine what happened to the eighth round.

Montgomery police officers assisted with placing the suspect in handcuffs. Officers John and Jane Doe rendered first aid to the suspect until relieved by Emergency Medical Technicians. Officer Doe utilized his department-issued trauma kit to provide aid to the suspect.

***Graham v. Connor* factors:**

1. The severity of the crime
2. Whether the subject poses an immediate threat to the safety of officers or others
3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight

Montgomery Police Department's policies explains an officer may use lethal force to "defend the member or a third person from what the member reasonably believes is an **immediate threat** of lethal force or force likely to cause serious bodily injury". MPD defines immediate threat as a person who is reasonably perceived by a member or employee to have the present **intent, means, opportunity and ability** to complete the threat, regardless of whether the threatened action has been initiated.

The *Graham v. Connor* factors will be evaluated for each type of force.

<u>Pointing of Firearms- Officers (1), (4), and (3)</u>

Montgomery Police Department's policies (Use of Force) states, "A member may intentionally point a firearm only when the member has reasonable cause to believe it may be reasonable for his/her safety or for the safety of others."

The following is an analysis of (FILL IN...) under the *Graham* factors:

1. Crime at issue:
    a. Fled from officers in a vehicle, endangering the public.
    b. Officers (4) and (3) knew suspect was driving a vehicle involved in an armed robbery. Officer (1) believed the crime was a carjacking.
    c. Fled from the scene of a hit and run.
    d. Attempted to carjack a citizen while fleeing from police.
    e. Armed with a firearm.
2. Level of threat posed by suspect:
    a. Suspect was armed with a firearm and did not put it down when directed by police.
    b. Suspect attempted a carjacking in front of officers leading officers to reasonably believe it likely he would commit other violent crimes.
    c. Officers believe he was attempting to take a hostage to facilitate his escape.
3. Level of resistance:

a. Suspect did not obey commands.
b. Suspect attempted to carjack a citizen to facilitate an escape.
c. Suspect maintained possession of a firearm.

Based on this information, officers (1), (4), and (3) were justified in pointing their firearms at the suspect. Each of the officers observed the suspect commit what they described as the violent crime of carjacking. The officers then observed the suspect run from them while in possession of a firearm. Civilian witnesses Clark and Drake stated they believed the suspect was trying to carjack the silver vehicle and was in possession of a gun. Civilian witnesses Brigham, Phillips, and Smith also observed suspect to be in possession of the gun.

Recommendations:

- As to the use of force, CI recommends all officers be exonerated.
- The investigation discovered that three used profanity when ordering the suspect to put down the gun. CI recommends department wide reminder for all officers to remain professional even during high stress incidents.

Use of Lethal Force:

MPD policy

Each officer's use of lethal force is evaluated separately below. In each case, there was a Level 4 – Type 22 use of force after the shooting. This force was evaluated as an included part of the Level 1 – Type 1 use of lethal force. There will not be a separate evaluation for that force.

(1):

The elements of Graham v. Connor and Immediate Threat were assessed based on WATCHGUARD video, security camera video, and statements obtained from civilian witnesses Drake and Smith.

Graham v. Connor

1. Severity of Crime – In addition to the previously documented criminal acts of Evading Police, Attempted Carjacking, Leaving the scene of an accident, and Resisting Arrest, officer (1) observed the suspect point his firearm at him.

2. Level of Threat – Suspect had a firearm and was pointing it towards officer (1).
3. Level of Resistance – Suspect did not follow commands, was fleeing, and pointed a firearm at officer (1).

Immediate threat

1. Intent – Suspect demonstrated his intent by not complying with lawful orders and pointing a firearm at officer (1).
2. Means – Suspect was in possession of a firearm.
3. Opportunity –Suspect was in close proximity to officer (1) while in possession of a firearm.
4. Ability – Suspect was physically fit and able to operate the firearm.

It was reasonable that officer (1) believed his life was in immediate danger. Suspect was in possession of a firearm and officer (1) believed he was pointing it at him with the intent to shoot him. Additionally, he evaluated his backdrop and determined that the suspect was in front of a wood wall and that there were no other people in his line of fire. Officer (1) fired his approved duty weapon three times in rapid succession. Based on the coroner's report that at least one wound was caused by a .45 round and since he was the only officer carrying a firearm with .45 ammunition, it appears at least one of officer (1)'s shots hit the suspect. Officer (1) then stopped firing and maintained his firearm pointed at the suspect as he assessed the effectiveness of the rounds. Officer (1) observed that the suspect had dropped his firearm. Officer (1) approached and kicked the firearm away from the suspect. Montgomery Police officers approached at that point and assisted by placing the suspect in handcuffs. Officer (1) then holstered his firearm.

An analysis of the Graham factors, the department's policy regarding lethal force, and the totality of the circumstances, shows that officer (1)'s lethal discharge of his firearm was objectively reasonable. Thus, based on the above information, officer (1)'s use of force is deemed to be in compliance with the law and MPD policy and procedure.

Recommendation: The recommended finding for officer (1)'s (Level 1 Type 1) use of force is EXONERATED.

(4):

The elements of Graham v. Connor and Immediate Threat were assessed based on WATCHGUARD video, security camera video, and statements obtained from

civilian witnesses.

Graham v. Connor

1. Severity of Crime – In addition to the previously documented criminal acts of Evading Police, Attempted Carjacking, Leaving the scene of an accident, and Resisting Arrest, officer (4) observed the suspect raising his firearm and pointing it in the direction of officer (3).
2. Level of Threat – Suspect had a firearm and was pointing it towards an officer.
3. Level of Resistance – Suspect did not follow commands, was fleeing, and pointed a firearm at an officer.

Immediate threat

1. Intent – Suspect demonstrated his intent by not complying with lawful orders and pointing a firearm at an officer.
2. Means – Suspect was in possession of a firearm.
3. Opportunity – Suspect was in close proximity to officers while in possession of a firearm.
4. Ability – Suspect was physically fit and able to operate the firearm.

Officer (4)'s perception that the suspect was an immediate threat was reasonable. As previously noted, officers and civilian witnesses stated the suspect had attempted a carjacking and was fleeing officers with a gun. Witnesses stated that they saw the suspect raise his firearm at police officers. Officer (4) reasonably believed that the suspect intended to shoot a police officer and upon hearing a shot, believed the suspect had attempted that act.

Officer (4) incorrectly believed that the first shots fired were by the suspect. WATCHGUARD video and physical evidence clearly showed that the suspect did not fire his weapon; however, officer (4) was not in a position to see the suspect's firearm. Even though officer (4) incorrectly believed the suspect fired his weapon, officer (4) reasonably believed the suspect was an immediate threat to officers. Montgomery Police Department's Use of Force policy does not require a suspect to initiate a lethal act to be considered an immediate threat. Officer (4) correctly assessed that the suspect was in possession of a firearm, was moving closer to a police officer, and was not following commands. These facts in addition to observations that the suspect had attempted a carjacking make officer (4)'s belief that the suspect was going to assault a police officer reasonable.

Officer (4) stated the suspect had stepped away from the security gate. The suspect

was turning and raising his firearm with it pointed in officer (3)'s direction. At this point, officer (4) fired a controlled pair of shots at the suspect. Officer (4) stated he fired the first shot and did not see any reaction from the suspect. Officer (4) observed the suspect was still standing, continued turning towards officer (3), and was still in possession of the firearm. Officer (4) then fired a second round.

After firing the second round, officer (4) observed the suspect fall to the ground. Officer (4) did not fire any more rounds. At this point, Montgomery police officers approached the suspect and placed him in handcuffs. At this point, officer (4) holstered his firearm.

An analysis of the Graham factors, the department's policy regarding lethal force and the totality of the circumstances, shows that officer (4)'s lethal discharge of his firearm was objectively reasonable. Thus, based on the above information, officer (4)'s use of force is deemed to be in compliance with the law and MPD policy and procedure.

Recommendation: The recommended finding for officer (4)'s (Level 1 Type 1) use of force is EXONERATED.

(3):

Graham v. Connor

1. Severity of Crime – In addition to the previously documented criminal acts of Evading Police, Attempted Carjacking, Leaving the scene of an accident, and Resisting Arrest, officer (3) observed the suspect raising his firearm and pointing it in the direction of officer (1).
2. Level of Threat –The suspect had a firearm and was pointing it towards officer (1).
3. Level of Resistance – The suspect did not follow commands, was fleeing, and pointed a firearm at officer (1).

Immediate threat

1. Intent – The suspect demonstrated his intent by not complying with lawful orders and pointing a firearm at an officer.
2. Means – The suspect was in possession of a firearm.
3. Opportunity – The suspect was in close proximity to officers while in possession of a firearm.
4. Ability – The suspect was physically fit and able to operate the firearm.

Officer (3)'s belief that officer (1)'s life was in danger was reasonable. Officer (3) stated the suspect failed to comply with commands from officers. The suspect maintained possession of a firearm as he fled from officers on foot. Officer (3) witnessed the suspect attempt to carjack a vehicle, presumably in an attempt to avoid arrest. Officer (3) believed the suspect was likely going to commit additional violent crimes in an attempt to continue to avoid arrest.

Officer (3) did not see anything that would have prevented the suspect from fleeing southbound. Officer (3) did not know why the suspect turned around and ran towards officer (1). When the suspect pointed his firearm at officer (1), holding it in both hands, officer (3) fired three rounds in rapid succession because he believed the suspect was going to shoot officer (1). Officer (3) stopped shooting as soon as he observed the suspect fall to the ground. Officer (3) did not holster his weapon until Montgomery Police Department Officers placed the suspect in handcuffs.
An analysis of the Graham factors, the department's policy regarding lethal force, and the totality of the circumstances, shows that officer (3)'s lethal discharge of his firearm was objectively reasonable. Thus, based on the above information, officer (3)'s use of force is deemed to be in compliance with the law and MPD policy and procedure.

Officer (2) was the only other officer in the area, and he did not fire because he was driving his vehicle at that time. He had just been involved in a vehicle collision and was not in a position to see the suspect's actions. Officer (2) only observed officer (1) fire his duty weapon.

Recommendation: The recommended finding for officer (3)'s (Level 1 Type 1) use of force is EXONERATED.

Scene Management Assessment

Incident Supervision Assessment

- In this incident:
  - Sergeant ..... took control of the OIS scene.
  - ALEA called for OIS investigation.
  - Lieutenant ..... responded to the scene.
  - Multiple ambulances were requested for the vehicle collision and the OIS.
  - An internal perimeter was set for the location of the OIS.
  - Sergeant ..... coordinated the canvass of the area.

- Sergeant …….. took control of the investigation.
- Units on scene were reminded to activate WATCHGUARDs for statements.
- Lt. …… assigned Officer …….. as a note taker.
- Officer …….. was assigned as the report writer.
- Sergeant ……. was assigned as the report writer.
- Use of Force and Pursuit were called into communications.
- Accident investigators were called to the scene.
- Peer support was activated.
- Homicide/Command notified.
- Involved officers were sequestered.
- Technicians were called to the scene.
- Additional officers were contacted to block the free off-ramp.
- Units were assigned to follow the suspect to the hospital.
- Homicide was called to the scene.
- Internal Affairs was notified of the shooting.
- Command was notified of the OIS.

The actions of the supervisors and watch commander on scene were in accordance with MPD policy.

Member Assessment

While reviewing the WATCHGUARD to ensure officers were sequestered appropriately, Officer _____ is observed saying, "You did everything right, you did what you had to do." _____ did not ask for any information regarding the incident and made no other comments regarding the actions taken by the officers. _____ sequestered (3) until he was transported to the Criminal Investigations Division. Though the statements are not a violation of policy, they can appear to condone actions that have not been assessed.

Recommendations: _____ should be provided training through the Peer Support Coordinator not to comment on the actions taken by officers who are being sequestered or are involved in a critical incident.

Medical Aid Assessment

Departmental policy, *"To the extent possible and without ever compromising safety, members shall ensure that they, when necessary or upon complaint of injury, provide medical first aid and/or emergency medical treatment as soon as practical*

congruent with their available equipment, resources and first aid training and certification."

WATCHGUARD evidence shows that a request for Code 3 medical for an officer involved shooting was made at 1500 hours, as the suspect was being handcuffed by Montgomery police officers. Officer _____ provided a trauma kit and assisted with first aid. Officers _____ and _____ also assisted with first aid. Video showed the suspect was breathing while officers were rendering aid.

Paramedics Plus arrived on scene at 1511 hours and assumed responsibility for the suspect. Paramedics Plus transported the suspect to Baptist Hospital South where he was pronounced deceased at 1526 hours.

The actions of the officers were consistent with MPD policy and training.

Recommendations: None

Equipment Assessment

Technicians were on scene and photographed officers (1), (4), and (3). They had all appropriate equipment. Other than their firearms, none of the equipment was utilized during this incident.

Technician _____conducted a round count with the following results:

	Chamber	Mag1	Mag2	Mag3	Mag 4
Duty Load 9mm (52 rds.)	1	17	17	17	--
Officer (4) (50 rds.)	1	15	17	17	--
Officer (3) (49 rds.)	1	14	17	17	--
Duty Load .45 Cal (53 rds.)	1	13	13	13	13

Officer (1)	(50 rds.)	1	10	13	13	13

Each officer's firearm was later collected and submitted to the lab for examination and comparison to the casings on scene. All firearms were determined to be fully functional. The casings located on scene support the evidence and statements regarding the number of rounds fired. The lab was unable to determine which recovered bullet fragments came from a specific firearm. (See Lab Report). The firearms collected are as follows:

Officer Number		Make	Model	Caliber	Serial
(1)	(personal)	Glock	21	.45	SMB440
(4)	(issued)	Glock	17	9mm	XAZ367
(3)	(issued)	Glock	17	9mm	XAZ435

901 City Property:

Officer (2) was involved in a collision. The collision was investigated via the Traffic Division. Officer _____ advised that the collision was deemed preventable. This investigation found no information to contradict those findings.

Recommendations: None.

Video Evidence Assessment

Officers (1), (4), and (3) activated their WATCHGUARDs as they exited their police vehicles. Their WATCHGUARDs remained active until they were sequestered after the officer involved shooting had occurred. The video capture was instrumental in determining the specific facts as they pertain to this incident. The investigation found that the officers activated their WATCHGUARDs in accordance with MPD policy.

Additional responding units also activated their WATCHGUARDs as required by policy. These videos capture first aid provided to the suspect as well as statements provided to officers on scene. Some of the citizens provided information but were unwilling to provide written statements. The proper use of WATCHGUARDs captured this information, which was vital to the investigation.

This investigation reviewed the WATCHGUARD video of all officers who were on scene.

Surveillance videos were obtained from Transit buses in the area/local housing/businesses. The video did not capture this incident.

Surveillance video was obtained from the Discount Store at 2627 Martin Luther King Jr. Way. The video captured the suspect run southbound on Martin Luther King Jr. Way. A few moments later it showed him running northbound on the sidewalk where officer (1) confronts the suspect. The video is consistent with the video captured via officers' WATCHGUARDs.

Recommendations: None.

MEMBER/SUPERVISORY ACCOUNTABILITY

There were no violations of law identified during this incident. The vehicle collision was appropriately handled at the time of the incident and was not evaluated in this investigation. The investigation did not reveal any instance where a member or supervisor failed to report misconduct.

RECOMMENDATIONS

This investigation makes the following recommendations for the Montgomery Police Department to consider and address.

Training Recommendations:

1. CI recommends a department wide reminder that officers should be mindful of their language when engaged in a critical incident.
2. Officer ___ should be provided training through the Peer Support Coordinator not to comment on the actions taken by officers who are being sequestered or are involved in a critical incident.

Recommended Findings:

As to Officer (1):

Use of Force **WITHIN POLICY**: *A case marked as "within policy" is defined as an officer involved shooting and deemed as within the Use of Force Policy.*

OUT OF POLICY: *A case marked as "out of policy" is defined as an officer involved shooting and deemed as out of policy in the Use of Force Policy.*

This investigation determined that Officer (1) pointed his firearm at the suspect but his actions were in accordance with law and with Montgomery Police Department's rules, regulations, or polices.

Use of Force **WITHIN POLICY**

This investigation determined that Officer (1) discharged his firearm three times, striking the suspect at least once, but his actions were in accord with law and with Montgomery Police Department's rules, regulations, or polices.

As to Officer (4):

Use of Force **WITHIN POLICY**

This investigation determined that Officer (4) pointed his firearm at the suspect, but his actions were in accordance with law and with Montgomery Police Department's

rules, regulations, or polices.

Use of Force **WITHIN POLICY**
This investigation determined that Officer (4) discharged his firearm two times at the suspect, but his actions were in accordance with law and with Montgomery Police Department's Department rules, regulations, or polices.

As to Officer (3):

Use of Force **WITHIN POLICY**
This investigation determined that Officer (3) pointed his firearm at the suspect but his actions were in accordance with law and with Montgomery Police Department's rules, regulations, or polices.

Use of Force **WITHIN POLICY**
This investigation determined that Officer (3) discharged his firearm three times at the suspect, but his actions were in accordance with law and with Montgomery Police Department's rules, regulations, or polices.

Investigative Review of Evidence:

A Few Examples:
Review of – Digital Photographs (Exhibit#--, obtained by---) showed the following:

- Zoo Worker --- was shown at Wal-Mart in uniform holding stolen items identified on by Wal-Mart loss prevention (see Exhibit #--).

Review of Officer ----'s Body-worn camera (Exhibit #--) revealed the following facts:

- Officers arrived at ---
- Officers stated that ---
- The Complainant told Officers that…
- Witness ---- were shown…
- Officers cleared the scene at…

Review of Police Vehicle 6210-1234 vehicle camera (Exhibit #--) revealed the following facts:

- Officers arrived at ---

- Officers stated that ---
- The Complainant told Officers that…
- Witness ---- were shown…
- Officers cleared the scene at…
- Officers drove down…

Review of New World Documents revealed the following facts:

- Officer --- was assigned as Unit 123 on the Duty Roster for (date)
- Officer --- was dispatched to (address) regarding Incident 2019-123456 (Exhibit #--)
- Officer --- completed a report for --- (Exhibit #--)
- Officer (witness) left the scene at ---- hours

Review of Emergency 911 Audio [Exhibit #--] revealed the following facts:

- Firefighter --- declared the scene ---- at ---- hours
- Detective --- instructed Patrol Officer --- to complete a report at ---- hours

Review of City-issued Cellular Data (Exhibit #--) revealed the following facts:

- Manager ---- sent the following sms text message to ---- on (date) at ---- hours:
  - "I want to meet up later and….."

Review of Montgomery Municipal Court Case #1234-123456 Disposition stated:

- Mr. ---- was found NOT GUILTY to the charge of ---- on (date) (Exhibit #--)
- Mrs. ---- was entered a plea GUILTY was ordered to attend a pre-trail program of ---- on (date) (Exhibit #--)

Mr. ----'s Memorandum (Exhibit #--) completed on (Date) contained the following statements:

- "Chief --- stated this…"
- "In my mind I thought it was ok to…"

Review of Disciplinary Records (Exhibit #--) revealed the following facts:

- Mrs. --- was issued a Form 28 – Employee Counseling Record on (date)
  - List Policy Violation
  - List Supervisor Issuing Form
  - List Witness
  - List Employee Response

Section IV – Assessment, Analysis and Conclusion:

Assessment:

The use of force must meet criteria set forth within the Constitution, the laws of the State of Alabama, and MPD's Departmental Policies. The City Investigations Department conducts an administrative review of the force used. The administrative review reviews training and tactics, and examines why the officers did what they did, with the goal being to obtain the most complete picture possible of what caused events to occur as they did.

In analyzing this event, City Investigations reviewed the entirety of the criminal investigative file prepared by ALEA , including officer statements, witness statements, diagrams, photographs, and physical evidence reports. City Investigations has studied the policies in effect on the date of the shooting and has reviewed relevant training materials and police practices.

*Example for a **POLICY REVIEW OUTCOME:***

Based on the testimony provided and the facts/evidence collected, it was determined that existing policy should be reviewed because _____.

- Policy language/wording is obsolete.
- One applicable City policy conflicts with another applicable City policy.
- There is no existing policy that addresses the circumstances outlined in this investigation.
- Existing policy contains erroneous information.
- Existing policy appears to conflict with another current Law, Rule, or Regulation from an outside entity.

SECTION V – Findings [Regarding Policy]:

Section VI – Official Forms and Evidence/Exhibits:

Official Forms: **(These forms go on the right side of the case folder.)**

8. Complaint Form: Name, date
9. Investigative Analysis and Director's Plan of Action:
10. Notification Letter to [Department]:
11. Citizen Witness Acknowledgment Form: Name, date
12. Employee Witness Acknowledgment Form: Date
13. Employee Garrity Warning Form: Date

Investigative Interviews - testimony/electronic recording/transcript:

4. Complainant/Witness #1: (Name, date interviewed)
5. Witness #2: (Name, date interviewed)
6. Witness #3: (Name, date interviewed)
7. Subject of Investigation: (Name, date interviewed)

All electronic recordings are on file at the Office of City Investigations located at 300 Water Street.

Evidence: **(These forms go on the left side of the case folder.)**

Remember – this is just an area where evidence is listed…it is "described" and discussed in the earlier Review of Evidence Section.

A few examples:

Exhibit #1 – Copy of Applicable Rules & Regulations for the Case Investigation: Rules and Regulations

Exhibit #2 – Any Department Specific Records (Police/Fire Dispatch Logs with narratives, Roll Call Listings, Report Summary, etc.)

Exhibit #3 – Police Department Payroll Records/Worksheets (contact Clerks XXX XXXX or XXX XXXX)

Exhibit #4 – Court Action Summary (contact Court Operations Supervisor XXX XXXX)

Exhibit #5 – City Cell Phone Records (contact Mrs. XXX XXXXX at 25 Washington)

Exhibit #6 – City E-mail Records (contact Mr. XXX XXXXXXX at 25 Washington)

Exhibit #7 – Previously completed written statements from employees or supervisors

Exhibit #8 – Any e-mailed correspondence, (Date)

Exhibit #9 – Video Evidence: L3 dash-cam and/or WatchGuard body-cam, etc., date

Exhibit #10 – Photographs (if necessary), date

All other pertinent information is on file at the Office of City Investigations located at 300 Water Street.