

Professional Standards Inquiry Policy Development:  
Receiving and Handling Complaints on Members of the Little Elm Fire Department

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CERTIFICATION STATEMENT

I hereby certify that this paper constitutes my own product, that where language of others is set forth, quotation marks so indicate, and that appropriate credit is given where I have used the language, ideas, expressions, or writing of another.

Signed: \_\_\_\_\_

### **Abstract**

In recent years, the Little Elm Fire Department has received several complaints, from extreme misconduct to minor policy violations, against its members. The problem which prompted this research stems from the department having limited guidance on how to receive and handle complaints; whether received from external or internal complaint sources. Not having a policy to provide consistent complaint processing procedures results in the potential of liability against the department and distrust from its members.

The purpose of this research was to create a policy which provided guidance to the employees on complaint reception and handling. In order to create a valid policy that created consistency, legal research on government employee rights as it relates to complaints and investigations against them was conducted. In addition, a review of existing standards was made to ensure the policy had foundation. Finally, other policies on complaint reception and handling from other departments were reviewed for guidance.

The results of this research included utilizing applicable federal laws and court precedence, state law, and local personnel policies to ensure a legally sound policy. The research also resulted in finding that there was limited guidance to fire departments on professional standard inquiries as they relate to the receiving and handling of complaints. However, the law enforcement profession provided a variety of standards and established policies which were incorporated in the resulting policy because of the similarities between the public service professions.

It was recommended to the Little Elm Fire Department to adopt the resulting policy. It was also recommended to the Little Elm Fire Department to recognize complaint reception and handling are a minute part of a complete professional standards

policy and further research should be conducted on professional standard investigations and discipline programs.

## Table of Contents

Certification Statement .....	2
Abstract .....	3
Table of Content .....	5
Introduction .....	6
Background and Significance .....	7
Literature Review .....	9
Procedures .....	35
Results .....	38
Discussion .....	53
Recommendations .....	57
Reference List .....	58
Appendix: LEFD Professional Standards Policy: Complaint	
Procedures (proposed) .....	61

Jon Gallis, an instructor at the National Fire Academy (NFA), said in a lecture to students in the Executive Fire Officer (EFO) Executive Development course while speaking on ethics, “you’re put on a pedestal, but a pedestal can wobble” (J. Gallis, personal communication, August 2, 2011). A firefighter’s professional standard is the ability to keep their balance. Unfortunately, firefighters can slip from the pedestal on which they are placed upon. When a firefighter does slip from the pedestal and a citizen or co-worker wants to file a complaint, “the complaint acceptance process must be as foolproof as possible” (Reiter, 2006, p. 2.1). Such a foolproof process will provide comfort to the petitioner ensuring their concerns are heard as well as providing the subject of the complaint a fair and equitable process.

The problem addressed in this research is that the Little Elm Fire Department (LEFD) is lacking in a professional standards inquiry policy which would, in part, direct the receiving and handling of complaints against its members, thus opening up the potential for liability against the department, and fostering distrust from the public department members.

The purpose of this research is to collect and analyze information related to professional standard policies, specifically with an interest in the receiving and handling of complaints. The information will be used to develop a policy for consideration by the department, Town staff, and elected Town Council which will provide direction to the members of the fire department through a procedure on receiving of complaints and will also provide consistent handling of complaints once received. An action research method will be used. The research will address the following questions:

1. What are current applicable federal and state laws which would govern a professional standard policy, specifically as they relate to the receiving and handling of complaints?

2. What standards are established through the National Fire Protection Agency (NFPA) of any other accreditation agency which would provide guidance in developing a professional standards policy, specifically as they relate to the receiving and handling of complaints?
3. What are other departments' or agencies' policies and procedures on professional standard inquiries as they relate to receiving and handling of complaints?

### **Background and Significance**

The LEFD is a combination department in north Texas which provides fire and emergency medical services (EMS) to a town of approximately 27,000 people. The department staffs 33 full-time and six volunteer firefighters/paramedics between two stations on a 24-hours on/48-hours off shift schedule. The command staff consists of the fire chief, assistant chief, EMS division chief, and fire prevention division chief. The operations division is supervised by the fire chief and has three captains and three lieutenants. The Fire Marshal's Office consists of the fire prevention division chief and two additional personnel who, in addition to normal fire department prevention duties (e.g. fire code compliance inspections and fire investigations) are responsible for the Town's code enforcement activities and investigation into environmental crimes which occur within the town limits. The LEFD is recognized by the State of Texas and the Federal Bureau of Investigations as a law enforcement agency. The department and has four staff members who are law enforcement officers who are also supervised by the fire prevention division chief. The Division Chief of Fire Prevention is tasked with conducting internal affairs investigations for all members of the department.

This study is significant to the LEFD for the fact that direction to department staff, through written policies and procedures, is limited as it pertains to the receiving and handling of

complaints. In the past several years, the LEFD has received numerous complaints against its members from both internal and external complaint sources. These complaints have come in the form of anonymous complaints, complaints received from other agencies, complaints in passing while away from the fire station, or directly from a Chief Officer or other members of the department. As these issues were brought to the attention of Chief and Shift Officers, it became evident that there was not a procedure on how one was supposed to receive the complaint, be it in writing or anonymous, or what the proper procedures were once the complaint was received. During this time of uncertainty, it was discovered that Texas laws provided legal responsibilities for the department in how complaints are received and, to a lesser degree, handled.

The goal of this action research will be to develop a policy for the LEFD which will provide direction to all members of the fire department when faced with citizen or employee complaints against the department as a whole or when directed towards a specific member of the department. The resulting policy will provide guidance on how to receive complaints and provide direction to supervisors on how to handle the complaints once received, providing for consistent handling; and thus, as a collateral result, will provide understanding to the members who are personally subject to a complaint.

This research relates to the United States Fire Administration (USFA) 2010-2014 Strategic Plan (n.d.) goal Number 4 which strives to “improve the fire and emergency services’ professional status” (p. 14). Further, the study re-enforces the USFA’s organizational values of integrity, honesty, accountability and trust (United States Fire Administration [USFA], p. AIII). Status is defined by dictionary.com as “the position of an individual in relation to another or others, especially in regard to social or professional standing” (2011). Based upon this definition, it can be inferred that firefighters and fire officers are held to a higher standard than



the general public. Evidentiary to the idea of higher standards for the fire service, the Gallup polling agency added for the first and only time in 2001 the occupation of firefighters in their annual Honesty and Ethics Survey. 90% of those surveyed by Gallup ranked the occupation of firefighters as “very high/high” when asked “how you would rate the honesty and ethical standards of people in these different fields” (Gallup, 2011, para. 2). By establishing a policy on how to handle complaints from the community or within, it ensures our honesty and ethics are maintained as set forth by the USFA’s goal of improving the professional status and maintaining the organizational values of the NFA.

This research relates to the EFO Program course *Executive Development* by addressing ethics and personal values, and service quality, two topics which are part of the course curriculum. The student manual discusses ethics and personal values in Unit 9, applicably titled “Ethics and Change” (USFA, 2011). This research establishes a procedure that reinforces ethical and personal values as discussed throughout this unit through a consistently used complaint process. Unit 11 of the EFO Executive Development Student Manual discusses service quality, stating that the dimensions of quality are based on the desires and needs of the customer (p. 11-7). Some of the dimensions of quality include: aesthetics or appearances, perceived quality, performance, and reliability (p. 11-7). Those needs, as it involves a complaint, are a fair resolution to the issue in which the complaint is established. When a complaint is handled properly, as established in a set procedure, these dimensions of quality are more aptly satisfied in the customers mind.

### **Literature Review**

The literature review for this research focuses on topics pertaining to federal, state and local laws; existing standards and guides; and current policies and procedures of other

departments or agencies which relate to this research and the complaint process. The reviewed literature includes federal and state laws, analysis of court cases, and local ordinances applicable to this research. The researcher interviewed a retired fire chief turned attorney and a law enforcement internal affairs investigator for guidance and information as it pertained to this research. Fire and police service standards and indexes of standards, along with best practice guides, were reviewed. The literature review included the analysis of current policies of outside agencies and departments. The internet was also used to access other documents related to the topic of complaint processing.

### **Review General to Research**

The literature review began with an interview of Retired Deputy Assistant Chief and Juris Doctorate Curt Verone, who addressed all research questions. Chief Verone (personal communication, January 5, 2012) provided information as to laws and court cases which would affect a personnel inquiry including the right to due process granted by the Fifth and Fourteenth Amendments to the U.S. Constitution and the *Garrity* warning, which came from the U.S Supreme Court Case, *Garrity v. New Jersey*, 385 U.S. 493 (1967). Verone explained the courts have held that public workers, who have a property interest in their employment through contractual or implied guarantees, are entitled to due process when that interest is taken away. Chief Verone expressed the need to fully understand the *Garrity* Warning when conducting investigations on employees, especially when criminal charges are or may be part of the findings of the complaint. *Garrity*, according to Verone, is required to be provided to an individual under administrative investigation which has criminal implications. In an administrative investigation, an individual could be compelled to answer questions related to the investigation and failure to

do so would result in further disciplinary action, which is contrary to criminal cases and protection provided by the Constitution.

Discussions with Chief Verone (2012) also centered on existing fire service standards for complaint reception, handling of complaints, and the investigation into complaints. When asked if he knew of any standards by NFPA or any fire service accreditation agencies, Verone replied fanatically “there aren’t any.” Verone explained “the fire service is 25-30 years behind law enforcement in personnel management” due to the nature of the police profession and the ease of upsetting the public. Another reason for the lag within the fire service is because “firefighters struggle with having the stomach for handing out discipline, where complaining on a fellow firefighter is treasonous and betrayal of the brotherhood” (Verone, 2012).

Chief Verone (2012) continued to explain the adoption of professional standards in the police force came from the understanding that not all complaints required discipline but could simply be resolved through training. Verone referred to the 1991 Rodney King incident in Los Angeles, California, where King, an African American, was the subject of a police brutality incident which was caught on videotape making national news. Chief Verone remarked, “when you look beyond the race issue, it was asked, ‘why was this allowed to happen?’ Supervisors were seen standing there watching and not intervening as the incident unfolded and it was determined that a lack of training was evident.” This moment in history, according to Verone, was the turning point in moving from strictly punitive action to the development of professional standards policies (Verone, 2012).

The interview with Chief Verone also covered policy and procedure development as it relates to the receiving and handling of complaints. Verone (2012) stated a complaint must be “defined in the broad sense in order to improve the department.” He suggested that departments

seek out complaints in order to learn where they need improvement, referencing Apple Computers who invites complaints on their products. “They want to know if the battery-life of their devices is not lasting as long as the consumer wants so they can begin research and development to correct the issue.” Complaints, according to Verone, can result in finding training issues, defending the firefighters when a complaint is made, or if necessary support punitive discipline. In conclusion of the interview, Chief Verone stated “consistency is the most important aspect of any professional standards policy and the way you handle situations to avert potential lawsuits” (Verone, 2012)

### **Applicable Laws**

#### **Federal law and court precedence.**

*Due process.* The Fourteenth Amendment of the United States Constitution reads, in part, “...nor shall any State deprive any person of life, liberty, or property, without due process of law” (U.S. Const. amend. XIV). The American Bar Association (ABA) provides an online legal guide that gives an explanation of due process and how it protects a public employee. The ABA Family Legal Guide explains, “the courts have held that an employee has a property interest in a job if there is a written or implied contract granting the employee a property interest in the job” (American Bar Association, 2004, para. 2). The information provided by the ABA guide also states “due process must be granted to an employee with property rights in a job when being discharged from that job” (para. 3).

Further review to support the relevance of due process included a document from the Alabama Municipal Insurance Corporation (AMIC), also referred to here as the “Alabama paper”. The Alabama paper provides, “a public employee facing termination has both statutory and constitutional safeguards to ensure fair and reasonable treatment” (Alabama Municipal

Insurance Corporation [AMIC], (n.d., para. 3). The AMIC article discusses major court decisions which support the fact that state employees are entitled to due process, including *Board of Regents v. Roth*, 408 U.S. 564 (1972) and *Perry v. Sinderman*, 408 U.S. 593 (1972), where the “court held that a public employee has a property interest protected by due process” (“Major Decisions”, para. 4), whereas their employment was the property protected. In 1976 the U.S. Supreme Court revisited the idea of public employees and due process in the case of *Bishop v. Wood*, 426 U.S. 341 (1976). In the *Bishop case*, AMIC explains, a police officer was dismissed based upon specific violations of policy during a private meeting with his superior. Ordinances in place for his jurisdiction did not provide for disciplinary hearings but did provide a clause for dismissal based upon the failure to perform to the standards of his classification, negligence, inefficiency or the unfitness to perform his duties (para. 5). The officer involved in this case argued that he was “deprived of his liberties because the discharge stigmatized him without him having an opportunity to refute the reason of discharge” (AMIC, n.d., “Major Decisions”, para. 5). The court found in *Bishop* that the officer did not have an interest protected by due process; and therefor, the Fourteenth Amendment was not violated in the officer’s termination. The courts did set out the following, according to AIMC (n.d.), in reference to the *Bishop case*;

Whether a property interest is created by ordinance or by implied contract, the sufficiency of the claim of entitlement must be decided by reference to state law; and that the interpretation of the ordinance by a federal district judge that the employee served at the pleasure of the employer and had no property right, which finding was affirmed by the court of appeals, would not be re-examined by the Supreme Court. (“Major Decisions”, para. 6)

The Alabama paper continues to explain “we must hasten to add that the laws of the state and the ordinances of a municipality must be regarded as the determining factor to whether an employee has a property right which is entitled to due process protection” (AMIC, n.d., “Major Decisions”, para. 6). The statement from the AMIC comes to bear based upon the finding of the courts in the *Roth* and *Sinderman* cases “that property interests are not created by the Constitution but by the rules or understandings that stem from independent sources such as state law” (AMIC, “Major Decisions”, para. 4).

AMIC (n.d.), citing various court decisions, provides four essential elements to due process: notice of the charges to be heard, notice of the time and place of the hearing, an opportunity for the to-be-terminated or to-be-disciplined employee to fairly refute the charges, and an impartial decision maker (“What is Due Process”, para. 1). Additional sub-elements of due process include but are not limited to: the notice of the hearing and notice of the charge against the employee should be in writing and all witnesses should be required to testify under oath (AMIC, n.d., “What is Due Process”, para. 2).

**Garrity and Kalkines warnings.** The Fifth Amendment to the U.S. Constitution reads in part that no person “...shall be compelled in any criminal case to be a witness against himself” (U.S. Const. amend. V). The Federal Law Enforcement Training Center (FLETC) has transcripts of podcast on their website as part of their legal divisions training program, including one which is related to and titled “Self Incrimination: Interrogating Government Employees” (Federal Law Enforcement Training Center [FLETC], n.d.). This particular transcript is an educational discussion between Steve Knerly and Jenna Solari, legal instructors at FLETC in Glynco, Georgia. Solari asked Knerly what would require investigators to handle the interviewing of government employees different from the average citizen. Knerly replies,

...it has to do with the ethical obligations they have as public employees, and the effect that may have on their Constitutional right against compelled self-incrimination. As public employees, the Standards of Conduct that guide their employment generally require they cooperate with internal investigations into their employment-related conduct. On the one hand, they have a right under the Fifth Amendment to refuse to answer an investigator's questions when they believe their responses could be used to criminally prosecute them. On the other hand, they could face disciplinary action, including possible termination, for refusing to cooperate... (FLETC, n.d.).

Knerly explains *Garrity v. New Jersey* 385 U.S. 493 (1976) involved an officer who was compelled to respond to questions in relation to a ticket-fixing scheme as part of an administrative inquiry and in turn, this testimony was used to convict the officers involved in the scheme. Since they were compelled to give testimony with the threat of losing their job the courts held their testimony was prohibited by the protection of self-incrimination of the Fifth Amendment. Knerly explains, if the testimony is not compelled and beyond the threat of losing their job for invoking the Fifth Amendment, "then any statement they'd give would be voluntary and could be used against them in a criminal prosecution against them" (FLETC, n.d.).

Solari ask the question, "when should this *Garrity* warning be used, and what does it say?" Knerly replies,

The warning should be given to an employee by the investigator prior to the questioning whenever the following circumstances exist: 1) the employee being interviewed would have an objectively reasonable belief that they could be disciplined or fired for refusing to cooperate with the investigator; and 2) it is foreseeable that the information sought from the employee may be used to prosecute the employee criminally. The warning

language used varies slightly from agency to agency, but the Department of Justice model version for the OIG's reads: "You are being asked to provide information as part of an investigation being conducted by the Office of the Inspector General into alleged misconduct and for improper performance of official duties. This investigation is being conducted pursuant to the Inspector General Act of 1978, as amended. This is a voluntary interview. Accordingly, you do not have to answer questions. No disciplinary action will be taken against you solely for refusing to answer questions. Any statement you furnish may be used as evidence in any future criminal proceeding or agency disciplinary proceeding, or both" (FLETC, n.d.).

However, in the event an investigation is not criminal and is based upon an administrative inquiry only, compelling testimony with the threat of punishment is allowed, as long as the employee is put on notice that the testimony cannot be used against them. Knerly explains,

Once employees are on notice that they can't incriminate themselves by their compelled cooperation, because their statements cannot be used against them criminally, they have no valid Fifth Amendment privilege to invoke and their refusal to cooperate can thus be punished. The key is ensuring that employees are aware of this, which led to the Department of Justice recommending the use by investigators of the *Kalkines* warning in such circumstances (FLETC, n.d.).

According to uslegal.com (2012) the term *Kalkines* warning came from the Supreme Court case *Kalkines v United States*, 200 Ct. Cl. 570 (Ct. Cl. 1973). The courts held that an employee should be sufficiently advised of their immunity of criminal prosecution and the possibility they could be fired if they failed to cooperate (uslegal.com, 2012). According to enotes.com (2012) the typical wording of the *Kalkines* warning may read:



You are being questioned as part of an internal and/or administrative investigation. You will be asked a number of specific questions concerning your official duties, and you must answer these questions to the best of your ability. Failure to answer completely and truthfully may result in disciplinary action, including dismissal. Your answers and any information derived from them may be used against you in administrative proceedings. However, neither your answers nor any information derived from them may be used against you in criminal proceedings, except if you knowingly and willfully make false statements (para. 3).

Knerly cautions in the FLETC (n.d.) podcast that the *Kalkines* warning may provide immunity from prosecution in criminal court and should be used at the advice of legal counsel.

The Federal Communication Commission's (2012) website explains the difference between *Garrity* and *Kalkines* warnings. "*Garrity* warnings are given when an individual is required to give information on a voluntary basis in connection with his or her own administrative misconduct, and the answers might also be used in a future criminal proceeding..." (Federal Communications Commission [FCC], n.d., para 3C); Whereas, "*Kalkines* warnings are given when the possibility of criminal prosecution has been removed...and the employee is required to answer questions relating to the performance of his or her official duties or subject to disciplinary action" (FCC, 2012, para. 3B).

It is noted by Don Taylor (n.d.), professor and contributor to Garrityrights.org, the *Kalkines* decision was issued by the U.S. Court of Claims in which "employment-related case decisions made by this court are only directly applicable in federal employment" ("Commentary", para. 2).

**Texas laws.** The research question addressing applicable laws was further answered through a review of Texas statutes, including the Texas Government Code and the Texas Local Government Code.

***Texas government code.*** Legislation has been adopted by the State of Texas in the Texas Government Code Chapter 614 Subchapter B titled “Complaint Against Law Enforcement Officer or Fire Fighter” which deals directly with the subject of this research. Chapter 614 provides the applicability of this law to any firefighter who is employed by the state or any political subdivision of the state (Tex. Gov’t Code, 2005, § 614.021 (a)(2)). Texas Government Code (2005) Section 614.022 states that in order for a complaint to be considered by the fire chief, the complaint must be in writing and signed by the complainant. The Texas Government Code continues to provide responsibility of the investigating department to provide written notification to the subject officer when a complaint is filed against them.

A copy of a signed complaint against a law enforcement officer of this state or a firefighter, detention officer, county jailer or peace officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed (Tex. Gov’t Code, 2005, § 614.023(a)). The statute continues to explain no disciplinary action cannot be taken unless a copy of the signed complaint is given to the subject of the complaint and termination or indefinite suspension cannot occur unless the complaint is investigated and the evidence proves the allegation made (Tex. Gov’t Code, 2005, § 614.023(b)).

***Texas Local Government Code.*** Texas Local Government Code (2007) Chapter 143, also known as the “civil service law” or simply “Chapter 143”, was also reviewed. Under Chapter 143.123, ‘Investigation of Fire Fighters and Police Officers,’ definitions and specific procedures

are defined in the handling of investigations. The definition of complainant is the most pertinent to this research and is defined as “a person claiming to be the victim of misconduct by a fire fighter or police officer” (Tex. Loc. Gov’t Code, 2007, § 143.123(a)(1)). The Texas Local Government Code also provides a timeline on when a subject under investigation must be notified to “no later than the 30<sup>th</sup> day after the date complaint is received by an investigator” (§ 143.123 (e)). The statute also states the subject of the complaint must receive a copy of the complaint in writing, identifying the nature of the complaint, and the name of each complainant, unless a criminal investigation has been initiated or if any information in the complaint would interfere with a criminal investigation. Further stated in this section is that a subject of an investigation may only be interrogated when the complaint is from a peace officer or if the complaint is sworn to under oath. Anonymous complaints are allowed under this chapter only in the event where the complaint is put in writing by the department employee who received the complaint and they swear under oath that the complaint was indeed anonymous (Tex. Loc. Gov’t Code, 2007, § 143.123(f)).

The civil service law also states that a firefighter or police officer may not be threatened with punitive action during an investigation, but can be told that failure to answer reasonable questions directly related to the investigation truthfully or failure to fully cooperate in the investigation may result in punitive action (Tex. Loc. Gov’t Code, 2007, §143.123(f)).

Local Government Code Section 143.002 provides that only municipalities which have had a local election to adopt Chapter 143 are covered by the statute (Tex. Loc. Gov’t Code (2005)).

**Local Personnel Policies.** A review of the current Town of Little Elm (TOLE) Personnel Policies was also conducted for information related to this research. Town policy has adopted the

procedure for compliant processing only by referencing Texas Government Code Section 614.021 through 614.023 as previously reviewed (Little Elm, 2010, Policy no. 6.11).

Additionally, the TOLE Policy provides that the town is an at-will employer and “Town employees serve at the pleasure of the Town Manager (except those charter officers who serve at the pleasure of Town Council) and the Town may terminate any employee from service with or without cause” (Little Elm, 2010, Policy no. 7.01). Additionally in policy Number 7.01 of the Town of Little Elm Personnel Policies, it states that any personnel action which is “in excess of an oral warning must be reviewed by the Human Resource Department prior to it being served to the employee” (Little Elm, 2010, Policy No. 7.01). No further direction is provided on this matter in Town Policy. In addition, the review of LEFD policy (2001) found no additional information concerning the receiving of complaints or how complaints should be handled; therefore, department policy would revert to established Town policy.

### **Existing Standards**

**NFPA standards.** In order to determine if the NFPA had any published standards on professional standards, specifically relating to the receiving and handling of complaints, a search was conducted of the standards list and this researcher was unable to locate any document related to this research. The researcher did review NFPA 1021, “Standard for Fire Officer Professional Qualification” (2009) to determine if guidance would be found which was relative. In Chapter 5, it states fire officers should have the skills and ability to “initiate actions to maximize member performance and/or correct unacceptable performance, given human resource policies and procedures, so that member and/or unit performance improves or the issue is referred to the next level of supervision. (National Fire Protection Agency [NFPA], 2009, section 5.2.1). This is the limit of guidance provided by the NFPA.

**Riley article.** Christopher Riley, Battalion Chief with Costa Mesa, CA. Fire Department wrote an article in Fire Chief Magazine documenting his research on developing a professional standards manual for the fire service (2005). In his article, Riley offers the advice,

When implementing professional standards model, it is highly advantageous to identify and incorporate dominant values shared by the entire organization. In the case of fire service agencies, it is critical that fire administration and employee labor groups work together to develop professional standards that encompass the shared values of a diverse work force (Riley, 2005, "In the real world", para. 8).

Chief Riley acknowledges in his article that most law enforcement agencies have established policies on professional standards or internal affairs to handle complaints against departmental employees. Riley (2005) continues, "in contrast, most fire departments operate without professional standards or internal affairs divisions" (para. 2). Riley also recognizes fire departments are placed under greater scrutiny from the public and that there are "a growing number of lawsuits resulting from internally generated complaints...and externally generated complaints..." (para. 3).

**Best practice guide.** Coventry (Conn.) Police Chief, Burt Thurnauer, authored a best practice guide on internal affairs as part of the Smaller Police Department Technical Assistance Program through the International Association of Chiefs of Police (IACP). This publication is part of a series of guides for smaller police departments developed by a grant from the Bureau of Justice Assistance, Office of Justice Programs of the U.S. Department of Justice.

The IACP publication begins with guidance on who should receive complaints. Thurnauer advises that internal affairs policies should specify clearly who should receive complaints. It is suggested "if there is a rank structure, it is most effective to assign the reception

of the initial complaint to a supervisor” (Thurnauer, n.d., p. 2). Chief Thurnauer says this allows supervisors to take on some responsibility of their subordinate’s actions. The Coventry Police Chief also provides that many agencies direct the reception of complaints to a specific intake officer, but cautions that this may cause supervisors to feel they have lost the responsibility of corrective actions when their subordinates make mistakes. “In either case,” Thurnauer says, “it is imperative that any investigation should be completed by someone of higher rank than the person who is subject of the investigations” (p. 2).

As to which complaints should be accepted, Thurnauer (n.d.) says accepting all complaints leaves little room for dispute on how the department handles complaints. “It is difficult to explain to a citizen why one complaint was accepted and one rejected for basically the same offense” (p. 2). Chief Thurnauer continues his publication by discussing the format of accepting complaints by stating,

One common way to receive a complaint is through a formal written statement, however, a police department wanting to portray an image of true responsiveness will accept complaints in any form – by phone, mail, in person, and today, by email or web form. It is highly recommended that anonymous complaints not only be accepted, but that the department’s policy should clearly say so (p.2).

Another aspect of an internal affairs policy is the notification of a complaint to the subjected officer. Thurnauer (n.d.) advises, “unless a criminal investigation prohibits it, the officer who is being complained about should know the circumstances of the complaint immediately” (p. 3). He suggests the preferred method of notification is in writing, including providing a copy of the complaint, and being advised as to which supervisor is handling the investigation.

Chief Thurnauer (n.d.) does provide a stipulation on handling a complaint based upon if it is administrative or criminal in nature. “Immediately after the complaint is received, the person assigned to investigate will usually be able to determine whether there is a criminal element to the case” (p.3). Procedures on handling complaints are distinct when dealing with administrative versus criminal complaints. Issues of *Miranda* and *Garrity* come into play and caution should be exercised.

If there is no criminal element then the investigation is purely administrative, meaning that the results will be personnel action not criminal action. If there is even a hint that there is criminal behavior on the part of the employee, then the first step should be to separate the matter into both a criminal investigation and an administrative investigation (Thurnauer, n.d., p.3).

Thurnauer warns, “failure to take administrative action regarding serious complaints can leave the chief, agency and city vulnerable to legal liability and/or public criticism” (p.3).

**Building trust document.** A literature review was also conducted on a document obtained on the International Association of Chiefs of Police (IACP) website entitled “Building Trust Between the Police and the Citizens they Serve: An Internal Affairs Promising Practice Guide for Local Law Enforcement.” The “building trust” publication extensively references the Commission on Accreditation for Law Enforcement Agencies’ (CALEA) accreditation standards. According to their website, CALEA was established in 1979 as a credentialing authority working with major executive law enforcement associations including the IACP, National Organization of Black Law Enforcement Executives, National Sheriff’s Association and the Police Executive Research Forum. The purpose of CALEA’s Accreditation Programs is to improve the delivery of public safety services, primarily by: maintaining a body of standards,

developing public safety practitioners, covering a wide range of up-to-date public safety initiatives, establishing and administering an accreditation process, and recognizing professional excellence (Commission on Accreditation for Law Enforcement Agencies [CALEA], n.d.).

The building trust document provides a section devoted to the complaint process. This section begins with the definition of a complaint: “A complaint is an expression of displeasure with the actions or services of an agency and/or its employer, or an allegation of wrong doing” (International Association of Police Chiefs [IACP], 2010, p. 20). The document explains that a complaint will trigger an investigation and therefore a procedure for receiving and handling complaints is necessary. The reason for having established procedures, according this IACP document, is to provide fair and impartial acceptance, processing, and investigation into complaints. A figure provided in the IACP (2010) document graphically illustrates the flow process of the complaint process; moving from the actual incident to the complaint, the reception, investigation assignment and concluding with officer and complaint notification (p.20). Decision points are given in this figure on defining complaints as internal or external; how complaints are received by either anonymous means, email, in person, via telephone, or internally; and the assignment of the complaint to a supervisor, IA office or to an outside investigator. The IACP cites CALEA which suggests it is “essential to have a written directive that delineates which types of complaints will be investigated by the subject officer’s supervisor and which will be referred to Internal Affairs” (p.22). CALEA accreditation standards are referenced again in the IACP document by stating the officer subject to the complaint should be notified in writing of the complaint against them (p 22).

In appendix E of the IACP (2010) document, replication of the CALEA “Standards for Law Enforcement Agencies, Standard Manual Text on Internal Affairs” are provided (pp. 67-



76). The given standards provided by IACP offer suggestions on directives to include in a professional standards inquiry including; stating all complaints are to be investigated (p.67), maintenance of complaint records (p.68), which departmental position is responsible for IA investigations (p.69), providing information to the public on the complaint process (p. 70), defining the type of complaints to be investigated by line supervisors or those which require investigation by the IA unit (p. 72), notifying the head of the department when complaints are received (p. 73), keeping the complainant informed of the progress and status of the complaint investigation (p. 75), and providing the subject of the complaint written notification that a complaint has been filed and their rights and responsibilities while under investigation (p. 76).

**Reiter manual.** “Law Enforcement Administrative Investigations”, authored by Lou Reiter (2006), is a guide provided as a handout in a 5-day internal affairs course. The manual is provided to the students to use as a basis for developing policies “for the handling of external and internal complaints alleging misconduct by agency employees” (p.1). Reiter addresses a limitation in the manual explaining, “no ‘boilerplate’ manual can be adequate for such a complex area of police performance” (p.1). Six factors are provided by Reiter to be considered in the development: (a) agency size and configuration, (b) political environment, (c) collective bargaining agreement, (d) state and local laws and regulations, (e) agency procedural process, and (d) constantly changing administrative case law (pp. 1-2). In chapter one of the investigations manual, Reiter advises, “a proper understanding of what constitutes a valid complaint is essential to start the entire complaint and administrative investigation process;” Without this understanding “the entire process is curtailed at the very beginning...” (p. 1.1). Reiter define a valid complaint as,

...an allegation from any source of circumstance(s) amounting to a specific act or omission, which if proven true would amount to employee misconduct, or an expression for an external source with a policy, procedure, practice, philosophy, service level or legal standard of the agency (p.1.1).

In law enforcement, a disagreement over a traffic citation or parking ticket is to be adjudicated by judicial procedures and not a valid complaint (Reiter, pp.1.1-1.2).

Misconduct, according to Reiter (2010), is the act or omission of an officer which would result in discipline of some form and includes the commission of a criminal act, negligence of duty, violation of a department policy or procedure, or conduct which tends to reflect unfavorably upon the employee and or the agency (p.1.2). Reiter explains it is the duty of any agency employee who “observes or becomes aware of any act of misconduct by another agency member shall immediately report the incident to the most available supervisor”; Reiter defines the omission of reporting an incident as misconduct in itself (p. 1.2).

In receiving the complaint, Reiter (2010) suggested “every effort shall be made to facilitate the making of the complaint by ensuring that the process is convenient, courteous, and prompt” (p.2.1). Personal appearances, telephone calls or letters written to the department by the complainant are all acceptable means of having complaints presented to an agency (Reiter, p. 2.1). Once a person indicates the desire to file a complaint that meets established criteria, Reiter suggests the complainant should be directed to the most immediate supervisor or asked to complete a complaint form (p. 2.1). In reference to anonymous complaints, Reiter offers that the “agency can become the complainant” (p.1.9).

### **Existing Policies of Others**

**University of Texas Systems Police Department policy.** In order to determine practices in place at other agencies on receiving and handling of complaints, a review was completed of the University of Texas Systems Police Department's (UTPD) policy on this topic. The UTPD policy provides sections establishing the scope of their policy, definitions related to their policy and a complaint procedure.

**Scope.** The UTPD (2009) policy section titled "scope" explains the policy was "established to provide an orderly, effective, and efficient process" (§ III.A) to receive and handle complaints upon officers of the department. Exceptions in the policy are made to the scope by eliminating corrective action which a supervisor would perform in the normal course of business and that would not require disciplinary action, or any information which may be a part of an annual review or performance evaluation (§ III.A.2). The scope broadens to delineate complaints of administrative nature or criminal nature allowing for separate investigations (§ III.C). The chief of the department is given the authority to temporarily suspend the administrative investigation in the event a criminal investigation is necessary (§ III.C). The UTPD policy continues by providing a definition of a complaint.

A complaint is an allegation(s) against an officer of the University of Texas System Police that could result in disciplinary action and that alleges one or more of the following:

1. An infraction of the University of Texas Systems Police Code of Conduct, Policies and Procedures issued by the director of Police or the rules, regulations, or policies of an institution police department;
2. An illegal act;

3. An infraction of rules of the Board of Regents of the University of Texas System (“Definitions”, § A.1).

***Complaint procedure.*** The complaint procedure portion of the UTPD (2007) policy is broken down further and sectioned by; (a) recording complaints, (b) processing complaints, (c) routing of complaints, (d) notifications, (d) officers right to respond, (f) immediate suspension, and (g) investigation (§ V.A-G). For the purpose of the research, the sections related to suspension and the investigation was not reviewed.

Recording of the complaint is required to be submitted on a form provided by UTPD (2007, § V.A). As part of the complaint form, not only is the alleged action or actions to be recorded but the indication of which “policy, rule, or regulation allegedly violated,” shall be included as well (§ V.A). The recording process concludes with the forwarding of the complaint to the subject officer’s chief and a copy forwarded to the Director of Police (§ V.A).

The UTPD (2007) policy explains the proper handling of a complaint received, whether it is in person, via written communications, email, telephone, anonymously, or initiated or received by the supervisor (§ V.B. 1-7). If a complainant makes it known of their intentions to file a formal complaint, the individual will be directed to the appropriate person within the department to file the complaint and will be ask to complete the department complaint form (§ V.B.1). If a written letter is received by the department the receiving supervisor shall complete the department’s complaint form and attach the written communication to the complaint form (§ V.B.2). In the event an email is sent to any member of the UTPD with a complaint, staff is directed to print the email, place it in a sealed envelope and forward it through their chain-of-command to the chief who will then determine who will be assigned to conduct the investigation (§ V.B.3). Telephone complainants will be directed to place the complaint in writing in either

format of their choice; the department form, a written letter or email (§ V.B.4). The UTPD policy states, “anonymous complaints will be investigated regardless of the manner in which the complaint is received” (§ V.B.6). A provision is included on handling complainants who refuse or choose not to place the complaint in writing.

If the complainant refuses to put the complaint in writing, it should be explained this will not necessarily prevent an investigation from being conducted, but that failure to submit the allegations in writing will cause the matter to be more difficult to process to an effective conclusion (UTPD, 2007, § V.B.5.1).

In the instance of a complaint given but not placed in writing the subject officer’s supervisor is directed to complete the department’s complaint form (§ V.B.5.1.b).

Internal complaints which are received by a supervisor or initiated by a supervisor are addressed in the UTPD policy. The policy requires supervisors to complete the complaint form when there is “firsthand knowledge or reliable information regarding an infraction or illegal act” (UTPD, 2007, § V.B.7).

**Notifications.** Notifications to the complainant and the officer subject to the complaint are required by the UTPD (2010) policy on complaint investigations (§ V.D). The notification to the complainant, per the policy, shall include notice that an investigation is being initiated and that they will be contacted by the investigating supervisor to discuss the complaint (V.D.1). The notification of the subject officer, per the policy, will be by providing a completed copy of the complaint and a *Garrity* Warning form within ten calendar days from the date the complaint is received (§ V.D.2.a). The UTPD policy requires the subject officer “refrain from contacting the complainant in any way which might be interpreted as an attempt to discourage the complainant from following through with the complaint” (§ V.D.2.a).

Any officer who is subject to a complaint has the right to respond as stated in the UTPD policy, and may be ordered to provide a response upon the reception of the complaint from their supervisor or investigating officer (§ V.E.1). The policy provides the subject officer to the opportunity to answer any additional infractions which may be discovered during an investigation “in the same manner as the original complaint” (§ V.E.2).

**Little Elm Police Department.** The Little Elm Police Department (LEPD) Police Chief, Waylan Rhodes, has developed a “Procedures Guide to Internal Investigations”, detailing the department’s policy on complaints and investigations. This guide was presented to the reviewer during an interview with LEPD Captain, Rodney Harrison. The guide provides applicable sections to this research, including: (a) introduction, (b) compliant reporting process, (c) types of complaints, (d) classification of complaints, and (e) guidelines for complaint investigations.

**Introduction.** The introduction of the LEPD guide discusses the reason for the policy as being for the protection of the public, department, and the officer or employee. The LEPD guide explains “the community has the right to receive fair, efficient, and impartial law enforcement” (Rhodes, 2009, p. 2). It continues to explain that allegations of misconduct must be investigated and adjudicated in order to maintain confidence in the department. Chief Rhodes (2009) explains the importance of protecting the department through the investigation of complaints.

The department’s reputation in the community is reflected in, and evaluated by, the conduct of its individual members, i.e., the department is both praised and condemned for the behavior of its members in individual situations. For the department to maintain an image of professionalism and propriety, it must generate confidence that allegations of employee misconduct will be consistently, fairly and honestly investigated (p. 3).

The LEPD Chief also utilizes the investigation of complaints to protect his officers against frivolous allegations. He writes, “employees must be protected as much as possible against false allegations of misconduct” (Rhodes, 2009, p. 3). Rhodes continues to explain the officer deserves to feel confident that investigations of allegations of misconduct are fair and consistent throughout the department, regardless of rank or position (p. 3).

The procedures set in place by the LEPD for investigations into complaints should offer either positive or negative forms of correction. Chief Rhodes (2009) explains:

In other words, if a behavior or performance violation is verified, alternatives to punishment should be considered: counseling, education regarding procedures or skill, and/or training in areas where the member may have been insufficiently trained. In the event that positive discipline is an insufficient remedy for the violation, or if an employee manifest a pattern of violations, negative discipline becomes the necessary remedy (p. 3).

Rhodes continues to state that negative discipline should be handled uniformly; however, policy of the LEPD does express supervisors will be held to a higher standard than subordinate members of the department.

***Complaint reporting process.*** The policy written by Chief Rhodes (2009) indicates all complaints will generally be accepted, either internally or externally. Rhodes explains all complaints must provide sufficient information to the allegation in order to be thoroughly investigated. Complaints are typically accepted at department headquarters by a supervisor of any rank or division, but may also be obtained off-site if the complainant so chooses (p.4).

***Types of complaints.*** Types of complaints are identified as either “internally generated complaints” or “externally generated complaints” (Rhodes, 2010, p. 4). Internally generated complaints are those from “any member of the department who finds rules or law violations in

the behavior of another member” (p. 4). These complaints, according to the policy, must be in writing and signed by the complainant and forwarded to the chief through the chain-of-command. The complaint must be typed on a department memo form with the subject identified as “internal record of complaint.” The policy states if the investigation determines the need for a sworn statement, the complainant will be directed to do so; however, internal complaints do not require to be sworn at the time of the initial complaint (Rhodes, p.4).

External complaints are accepted in one of four ways, (a) personal appearance, (b) letter of complaint, (c) complaint by telephone, or (d) anonymously (Rhodes, p.4-5). In any instance of complaint reception, excluding anonymous complaints, the department complaint form must be completed and notarized, either at the time of complaint or during a follow-up to telephone or letter complaints (p.4-5). Anonymous complaints are documented by the person receiving the complaint in writing and forwarded directly to the Police Chief for review and possible assignment for investigation (p. 5). Any complaint received where a delay in initiating the investigation would hinder the investigation, the complaint should be immediately brought to the chief’s attention, in person or by telephone (p.5).

***Classification of complaints.*** The LEPD policy section on classification of complaints discusses three different classes of complaints and identifies the investigative responsibilities for the complaint (Rhodes, 2009, p.6). The classification of the complaint is determined by the chief upon the review of the complaint. A “Class 1 Compliant” is the most serious of complaints as determined by the Chief. Class 1 complaints involve those which alleged criminal misconduct. Such criminal misconduct can be overt as in the cases of theft, criminal mischief, or the like; or indigenous to the misconduct such as civil rights violations, excessive force or unlawful arrest. The LEPD policy states “any complaint which, on its own merit, could potentially yield an



indefinite suspension will be declared a Class 1 complaint” (p.6). Complaints on an officer that are a separate incident but are related to any previously sustained complaint investigation will be enhanced to a Class 1 complaint. Class 1 complaints are investigated by the chief or his designee (p.6).

A “Class 2 Complaint” is less serious in nature than a Class 1 and is generally concerned with departmental policy violations. If a complaint classified as a Class 2 is sustained, negative discipline could be assessed. Class 2 complaints are investigated by the chief or his designee (Rhodes, p.6).

The least serious classification of complaints is a “Class 3 Complaint.” This class of complaints is “assigned to informational situations of complaints of an exceedingly minor nature” (Rhodes, 2009, p. 6). Sustained complaints in this class typically result in positive discipline. Class 3 complaints are investigated by the supervisor of the subject officer (p. 6).

***Guidelines for complaint investigations.*** Any member of the LEPD who is the subject of an investigation is strictly prohibited from conducting their own investigation into allegations against them and from contacting the complainant or witnesses (Rhodes, 2009, p.7). The LEPD policy provides the subject officer with a copy of the signed written complaint and rule violations. In the event of an informal complaint, neither signed nor notarized, and an investigation is deemed necessary, the chief or his designee may reduce the complaint in writing and serve as the complainant (p.7).

The officer subject to an investigation may be compelled to give response to a complaint, in which case, according to the LEPD policy shall be given the *Garrity* Warning. The policy also indicates, in reference to *Garrity*,

The officer under investigation for non-criminal allegations will not be allowed to have counsel present during an interview (Sixth Amendment right to counsel privileges does not apply to civil or administrative matters. However, during investigations of criminal allegations, the accused officer may have counsel present at his (officer's) request) (Rhodes, 2010, p. 8).

***Interview with Captain Harrison.*** In order to obtain some explanation of the procedures of the LEPD, the researcher conducted an interview with Captain Harrison, the department's lead internal affairs investigator. Captain Harrison (personal communication, January 6, 2012) advised that all external complaints must be in writing and notarized. As part of the complaint form a statement is provided to the complainant warning them applicable laws on perjury and other falsifications.

In an effort to protect our officers from frivolous complaints and allegations, we require that the complainant signs an affidavit that they are aware if they make a false statement they could be in violation of state perjury and falsification laws. If a complainant is reluctant to sign this statement, it could mean that the validity of the complaint is questionable (R. Harrison, personal communication, 2012).

Captain Harrison (2012) explained supervisors have the ability to handle complaints at their level when it involves department procedures or minor issues. The officer is directed, however, to ask the complainant what they want done to resolve the complaint. He advised that most of the time the complainant just wants to be heard and to know the supervisor is going to address the issue with the officer. Harrison stated most supervisors will document all informal complaints to determine if a pattern arises or if additional training is needed. If the complainant advises the supervisor that they want to file a formal complaint, the supervisor must provide

them with the necessary steps on filing a complaint and make the process as easy as possible for the complainant.

### **Influences**

Findings within the literature influenced this research by guiding the researcher toward the applicable laws of the United States and the State of Texas, including applicable court cases and legal precedence, as they relate to due process in the Fourteenth Amendment, and rights afforded to public employees. The literature also provided the researcher with an academic understanding of the internal affairs process as it relates to the handling and receiving of complaints against employees in a public service related occupation. Additional guidance was provided to the research from literature reviewed of existing policies of other departments' internal affairs and complaint processes. All literature reviewed has directly influenced the ability of the researcher to answer research questions established and facilitate the purpose of this action research.

### **Procedures**

The purpose of this research was to develop a policy for the LEFD on the handling and receiving of complaints against members of the department which is compliant to applicable laws, that followed published standards or guidelines established for the fire service, and utilized existing policies of other departments or agencies for guidance.

An interview of Chief Curt Verone, J.D. was used to obtain information which was related to all research questions. Chief Verone provided guidance into federal due process laws, confirmation of the lack of standards in the fire service for professional standards, and shared that law enforcement agencies are more versed in professional standards, including the receiving and handling of complaints, and the investigation into complaints.

To answer the research question “what are the current applicable laws which would govern a professional standard inquiry as it relates to the handling of complaints,” the following procedures were utilized. Research was conducted online to locate federal and state laws and legal writings on the interpretation of these laws. This procedure allowed for the obtaining of the wording of the Fifth and Fourteenth Amendments to the U.S. Constitution. The literature obtained provided reviews of Supreme Court cases that were related to due process of public employees and the right from incriminating one’s self in criminal prosecutions, as well as, finding specific state laws as they relate to the complaint process of law enforcement and fire department personnel. The personal collection of the researcher included local policies and procedures of the Town of Little Elm and the LEFD, allowing for the review of these documents to determine the completeness or lack thereof as they relate to this research.

To answer the research question ‘what standards are available through NFPA or any other accreditation agency which would dictate the content of a professional standards policy or that would provide guidance?’ the following procedures were utilized. An online search through the NFPA Standards as they related to professional development and standards was conducted. This search failed to offer any guidance to this research and only had the effect of influencing this research by demonstrating that there are no fire service related standards into professional standard policies as they pertain to complaints and their investigations as a whole. In order to locate other standards related to this research, online research was conducted for professional standards and internal affairs standards relating to law enforcement, as this profession is closely related to the fire service by also being a public safety entity with intimate public contact. The online research found the “Best Practice Guide” on internal affairs for small law enforcement agencies and a document titled “Building Trust Between the Police and the Citizens They

Serve.” The personal collection of the researcher included training course material on law enforcement internal affair investigations, providing an academic view of the complaint process.

To answer the research question “what are other departments and or agencies policies and procedures on professional standard inquiries,” the following procedures were utilized. An online search for police department procedures on complaint investigations led to the discovery of the UTPD “Complaint Investigation” policy. Additionally, an interview of Captain Rodney Harrison of the LEPD provided information into the procedures used at the local police department and the presentation of the “Procedures Guide to Internal Investigation” written by the LEPD Chief, Waylan Rhodes.

The final procedure used to complete this research was to take applicable portions of the literature which was reviewed and modified and placed them into a policy on the receiving and handling of complaints, so that it meets the needs of the LEFD. Utilizing the LEFD policy and procedures document’s template, each section including: purpose, policy, legal, definition, and procedure, was thoroughly examined as to the content needed from the applicable research data.

### **Limitations**

This research was limited by a number of factors, primarily in the fact that there are no standards specifically addressing the complaint procedure in the fire service. Other limitations included the complexity and abundance of the various scenarios of which a complaint can be derived from and laws and regulations which dictate handling of specific complaints. This research is also limited in the fact that the receiving and handling of complaints is just a minute part of a complete professional standard policy. The composition of the LEFD members also created a limitation. A policy on receiving and handling of complaints has to encompass not

only firefighters, but law enforcement officers, code enforcement officers, and civilian employees and volunteers.

### **Results**

This action research posed three questions in order to assist in the development of a department policy on professional standards, specifically pertaining to the receiving and handling of complaints against members of the department. The ultimate result to this research is the creation of this policy. The results are divided into two sections; 1) the results of research question one, which was reviewed through existing literature, analyzed and provided the results that follow; and, 2) the research utilized applicable data obtained from the literature review to answer research questions two and three in order to meet the needs of the LEFD, whereas, the results are expressed in the format of the LEFD policies and procedures document's template.

#### **Research question one**

What are current, applicable federal and state laws which would govern a professional standards policy, specifically as they relate to the receiving and handling of complaints? The research found through literature review several laws as well as court precedence which are in place that directly relate to this research.

Due process is an entitlement given to United States citizens that protects them from the government depriving them of life, liberty, and property (U.S. Const. amends. V and XIV). In the Fourteenth Amendment, due process is broadened to protect the citizens from the same deprivations by any state of the union (U.S. Const. amend. XIV). Federal courts have found that government employees have a protected property interest as established in the Constitution (ABA, 2004, para. 2; AMIC, n.d., "Major Decisions", para. 4; Verone, 2012). This interest is their employment. When a governmental entity is preparing disciplinary action that could

jeopardize an individual's right to property, the government is required to provide due process to the employee. To simplify, the government (employer) is depriving the citizen (employee) of a protected property interest (their job) when discipline suspends or terminates that employment.

Due process however is limited to those public employees who have a true interest in their employment through a written or implied contract (ABA, 2004, para. 2; Verone, 2012). This true interest, according to court decisions, is not created by the Constitution, but is established by the laws of the state or municipality (AMIC, n.d., "Major Decisions", para. 4). Without a contract, or when it is not established by state law or local ordinance indicating there is no guarantee of continued employment, due process is not entitled to the employee.

As a procedural right, due process involves the elements of;

- notifying in writing the charged employee,
- providing opportunity of the charged employee to refute the allegations brought forth,
- having an impartial decision maker in the investigation and discipline, and
- that all witness be required to testify under oath (AMIC, n.d. "What is due Process", paras. 1-2).

These elements of due process are implemented into Texas legal statutes, Government Code and Local Government Code, as it relates to the professions of police officers and firefighters and the complaints against them.

In the Texas Government Code, any complaint that is received against a police officer or firefighter is required to be in writing and signed by the complainant (Tex. Gov't Code, 2005, § 614.022). This section of the Government Code, however, does not provide a requirement for the statement of the complainant be under oath, only signed. Texas Local Government Code does

provide the ability for a department to investigate an anonymous complaint, if the receiving department employee reduces the complaint into writing and swears under oath to the fact the complaint was in fact anonymous (Tex. Loc. Gov't Code, 2007, § 143.123(f)). Under the Texas Local Government Code, the person who filed the complaint may not be assigned as the investigator into the complaint, thus providing an impartial decision maker (Tex. Loc. Gov't Code, 2007, § 143.123(e)). Furthermore, Texas law requires that any officer or firefighter subject to a complaint must receive a copy of any signed complaint within a reasonable amount of time following the reception of the complaint and no action may occur until such time the individual has received a copy of the complaint (Tex. Gov't Code, 2005, § 614.023 (a-b)). As established by Chapter 143 of the Texas Local Government Code, once the complaint is received by an investigator, the investigator has 30 days to notify the subject individual of the nature of the investigation in writing and the names of each person who has filed the complaint, if known. A caveat is provided that if notifying the individual subject to the complaint would hinder a criminal investigation, or a criminal investigation has already been initiated based on the complaint, notification may be delayed (Tex. Loc. Gov't Code, 2007, § 143.123 (e)).

It should be noted that the federal courts precedence on due process and the Texas Local Government Code, Chapter 143 are not applicable to the LEFD. As discussed previously, the courts found that due process as it relates to public employment is only afforded to an individual under contract, written or implied, and such right is established not from the Constitution, but from an independent source (AMIC, n.d., "Major Decisions", para. 4). In kind, the Texas Local Government Code is only applicable to jurisdictions which have held a public election and adopted this chapter by a majority vote (Tex. Loc. Gov't Code, 2005, § 146.002 (a)(1)(C)). The Town of Little Elm expressly removes such implied guarantees of employment through an at-



will employment clause, eliminating the due process right according to federal law; however, the Texas Government Code does provide legal requirements which mimic due process procedures. (TOLE, 2010, Policy no. 7.01; Tex. Gov't Code, 2005, §§ 416.021-023). Additionally, the Town of Little Elm has not adopted through public elections Chapter 143 of the Local Government Code; thereby negating the legal requirement of providing an impartial decision maker or establishing a timeframe of notification or the ability to delay in notification.

The U.S. Constitution also provides protection of citizens from presenting self-incriminating evidence of an illegal act punishable by fines or penalties (U.S. Const. amend V). The Fifth Amendment becomes critical in the investigation of a complaint against a firefighter that alleges criminal activity. Due to ethical obligations of government employees to answer to allegation of misconduct as it relates to their profession, compelling information which may criminally incriminate the subject during an investigation can be a violation of the Fifth Amendment (FLETC, n.d.). Steve Knerly of the Federal Law Enforcement Training Center, Legal Division explains,

On one hand, they [the employees] have a right under the Fifth Amendment to refuse to answer an investigator's questions when they believe their responses could be used to criminally prosecute them. On the other hand, they could face disciplinary action ... for refusing to cooperate (FLETC, n.d.).

This scenario was addressed in *Garrity v. New Jersey*, 385 U.S. 493 (1976). *Garrity* argued that testimony given during an investigation into a ticket-fixing scheme was compelled of him under the threat of administrative punishment and ultimately used to convict him in criminal court. The court's decision held that testimony given during the administrative investigation was compelled,

and therefore, a violation of the Fifth Amendment and inadmissible in criminal court (FLETC, n.d.).

The decision of the courts in *Garrity* led to the creation of the *Garrity* warning. The *Garrity* warning is provided to the subject of an administrative investigation and is intended to warn them that they are subject to an investigation for misconduct, that the interview is strictly voluntary, and that any statement made may be used as evidence in future criminal and/or administrative proceedings (FCC, 2012, para. 3C; FLETC, n.d.). Criteria to determine the use of the *Garrity* warning includes; when the employee being interviewed has a reason to believe that failure to cooperate in the investigation would lead to termination and where it is foreseeable that the information given could be used to criminally prosecute the employee (FLETC, n.d.).

*Garrity* is not always required when conducting an internal investigation. An employee may be compelled to give information as it relates to the specific complaint against them, and when the complaint does not allege any criminal wrong doing (FLETC, n.d.). This is as long as the employee is given notice that the testimony cannot be used against them in a criminal court and failure to cooperate can lead to administrative action, including termination. It is cautioned however, if during an administrative investigation the discovery of criminal conduct is discovered, the administrative investigation should stop and a criminal investigation be conducted (FLETC, n.d.). This is not to suggest that the administrative inquiry should be suspended indefinitely (Thurnauer, n.d., p.3).

In order to provide notice to an employee during an administrative investigation without criminal potential, the Department of Justice uses what is known as the *Kalkines* Warning (FLETC, n.d.). Similar to *Garrity*, the *Kalkines* warning comes from a federal court decision, *Kalkines v United States*, 200 Ct. Cl. 570 (Ct. Cl. 1973), where the courts held that an employee

should be advised of their immunity to criminal prosecution and their failure to cooperate fully in an administrative inquire could result in termination (uslegal.com, 2012). *Kalkines* is used when the potential for criminal prosecution is removed and the employee is required to provide the requested information or face disciplinary action (FCC, n.d. para. 3B). *Kalkines* is however, not applicable to the states as it was decided in the U.S. Court of Claims and therefor is only directly applicable to federal employment (Taylor, n.d. “Commentary”, para. 2). The information found in *Kalkines*, does however, provide some guidance into the local handling of administrative investigations.

At the local level, the Town of Little Elm has adopted only the provisions of the Texas Government Code as discussed previously (Little Elm, 2010, Policy No. 6.11). The Town does not provide any direction other than regurgitating this law on the receiving of complaints against the members of the fire department. On handling complaints, Town policy does required that any complaint that has the potential to result in discipline greater than an oral warning is to be reviewed by the Director of Human Resources (Little Elm, 2010, Policy No. 7.01).

### **Research questions two and three**

What standards are established through the National Fire Protection Agency (NFPA) or any other accreditation agency which would provide guidance in developing a professional standards policy, specifically as they relate to the receiving and handling of complaints?

What are other departments’ or agencies’ policies and procedures on profession standard inquiries as they relate to the receiving and handling of complaints?

At the time of this research, the NFPA did not offer any guidance into the development of or provide a suggested standard on how a fire department should handle a complaint against a member of its own. In addition to the NFPA, there are no other agencies or groups which

provide assistance directly related to fire department policies on the receiving and handling of complaints (Riley, 2005; Verone, 2012). Alternatively, there is a great deal of information provided to law enforcement or police agencies on this topic. The nature of law enforcement invites complaints against officers and therefore, these agencies have had to create policies on complaints and complaint investigations, thus putting law enforcement years ahead of the fire service in this area (Verone, 2012). Most law enforcement agencies have established internal affairs divisions or professional standards units that deal with the administrative investigation on members of the force (Riley, 2005). As such, the policy of two law enforcement agencies in Texas were reviewed to evaluate their policies and procedures for complaint handling included. This information was used to develop the professional standard policy on complaint procedures for the LEFD. Additionally, with the working relationship between the LEFD and the LEPD and the fact the LEFD has law enforcement officers of its own, all attempts to be consistent with their policy manual were made. The following results provide direction on the context of the definitions, purpose, legal and procedures sections of the final policy proposal.

**Definitions.** Definitions are provided in the complaint procedure policy in order to clarify the verbiage used.

*Complaint:* an allegation(s) against a member of the LEFD that could result in disciplinary action which alleges a policy violation or misconduct (UTPD, 2007, § III.1.A).

*Complainant:* a person claiming to be a victim of misconduct, or a witness to a policy violation or misconduct of a member of the LEFD (Reiter, 2010, p. 1.2).

*Department complaint:* a complaint from an external source directed towards departmental procedures or operations (Reiter, 2010, p. 1.1).

*External Complaint:* a complaint from any individual who is not a member of the LEFD (Rhodes, 2009, p.4).

*Internal Complaint:* a complaint by a member of the department who finds policy violation or misconduct in the behavior of another member. (Rhodes, 2009, p.4)

*Member:* an individual who is employed in any capacity with the LEFD, including full-time, part-time or volunteer.

*Misconduct:* an act or omission by an employee that is a criminal act, misdemeanor, or other conduct which may tend to reflect unfavorably upon the Town of Little Elm or the LEFD (Reiter, 2006, p. 1.2).

*Policy Violation:* an act or omission that is in direct conflict of a current policy of the Town of Little Elm or the LEFD (Reiter, 2010, p. 1.1).

*Supervisor:* A member of the department, who holds the rank of, is acting or temporarily appointed to the rank of, or who is stepping-up in to the position of Lieutenant or above.

**Purpose.** The public holds firefighters to a higher standard than most occupations (Gallis, 2011; Jones, 2011). It is therefore expected that the members of the LEFD comply with all Town and department policies and procedures and to conduct themselves in a manner that looks favorably towards the department, on-duty and off-duty. Due to an increase the number of lawsuits filed against fire department from both internal and external complaints, a consistent complaint procedure is necessary to reduce liability against the department (Riley, 2005, para. 3; Verone, 2012). In the event a policy has been violated by a member of the department or the actions of a member of this department are believed to constitute misconduct by an internal or external source and a complaint is received, the complaint shall be fully investigated. Accepting all complaints provides little room as to the questions on why one complaint is accepted and

another one is not (Thurnauer, n.d., p. 2). Additionally, in order to maintain a professional image to the public and the members of the department, the department must provide confidence in them that all “allegations of employee misconduct will be consistently, fairly and honestly investigated” (Rhodes, 2009, p. 3).

The intent of an investigation into a complaint against a member of the department is three-fold; it protects the public, the department, and the employee (Rhodes, 2009, p. 3). An investigation provides the public with a fair and efficient means to have their complaints heard. Any complainant or subject of a complaint is entitled to have a procedure that creates a process which is fair and impartial (IACP, 2010, p.20). The department is protected through a consistent complaint investigation process by limiting liability and maintaining the confidence of community, as “the department’s reputation is directly reflected in, and evaluated by the conduct of its members” (Rhodes, 2009, p.2; Verone, 2012). In order to protect the employee from frivolous accusations of misconduct a professional standards inquiry policy is necessary (Rhodes, 2009, p.3). The complaint investigation can prove an allegation true or exonerate the firefighter of wrong doing (Verone, 2012). It is imperative the members of the department are confident in the process, knowing it is fair and consistent throughout the department.

**Legal.** As explained in the results of research question number one, several legal precedence and laws are required to be followed in a professional standards inquiry policy as it relates to the receiving and handling of complaints. The policy is established to facilitate compliance with the Fifth and Fourteenth Amendments to the U.S. Constitution on due process and self-incrimination. Specifically with preserving the right of the accused to not incriminate themselves the policy dictates the use of the *Garrity* and *Kalkines* warnings. Although the *Kalkines* Warning has not be established for state or local use, the idea of compliance with the

U.S. Court of Claims decisions offers a safeguard in the event of a future challenge (Taylor, n.d., “Commentary”, para. 2).

The policy is also established to be in compliance with the Texas Government Code §§ 614.021-023, “Complaints Against a Law Enforcement Officer or Fire Fighter.” The Town of Little Elm is required to comply with these laws and as such, adopted by reference in the Town’s personnel policy (Tx. Gov’t Code, 2005, § 614.021(a)(2); Little Elm, 2010, Policy no. 7.01). In addition, the policy incorporates the requirement of the Town to have any complaint that will or may result in discipline greater than an oral reprimand reviewed by the Director of Human Resources (Little Elm, 2010, Policy no. 7.01).

**External complaints against members of the LEFD.** External source complaints are those which come from outside of the fire department.

***Processing complaints.*** The term “receiving of complaints” can mean two things; the person who physically accepts the complaint and the method or format in which the complaint is presented to the department. When referring to the individual who accepts complaints, it is suggested that complaints begin with any supervisor (Thurnauer, n.d., p. 2). In the event a supervisor is not available, the employee who is handling the complainant should obtain as much information as possible, reduce the complaint to writing and forward to a supervisor for follow-up as soon as possible (Reiter, 2006, p. 2.2). The format of complaints received include, email, in person, by letter, phone, or anonymously and should be accepted in any form. The format of how a complaint is accepted must be established in policy in order to maintain consistency in the process (IACP, 2010, p. 20; Thurnauer, n.d., p. 2). The LEFD policy is designed to incorporate both meanings in to the term “processing complaints.”

This policy provides that all complaints will be accepted and will be so in the following formats; in person, by email, by letter, by telephone, and anonymously (Rhodes, 2009, pp. 3-4; Thurnauer, n.d., p.2). However, for any complaint to be formally levied, the complaint must be placed in writing and be signed by the complainant either at the time of the complaint or during follow-ups to complaints not made in person (Rhodes, 2009, pp. 4-5; Tex. Gov't Code, 2005, § 614.022).

Regardless of the format of the complaint, the chief of the department should be notified (IACP, 2010, p. 73). In this policy all complaints are directed to the Fire Chief to be assigned a classification as well as an appropriate investigator.

*In person.* An individual wishing to make a complaint in person shall be directed to a department supervisor. The supervisor who is the initial contact for the complainant shall have the individual reduce their complaint in writing (Rhodes, 2009, p. 4; UTPD, 2007, § V.B. 1). At times, an individual may approach a member away from the fire station. In this case the member who is the initial contact shall direct the complainant to the fire administration offices and request to speak to an available supervisor. The member who was approached should immediately contact their supervisor.

*By letter.* In the event a complaint is received by a letter, the letter should be directed to the chief of the department (Rhodes, 2009, p. 5; UTPD, 2007, § V.B.2).

*By email.* With today's technology, the use of email has replaced the hand written letter, and complaints can be easily sent to the department in this manner (Thurnauer, n.d., p. 2). When any member of the department receives an email expressing a complaint, the receiving person shall print the email, place in an inter-office envelope and forward the correspondence to the Fire Chief (UTPD, 2007, § V.B.3).



*By telephone.* In the event a member receives a telephone call from an individual, the receiving member shall advise them to make the complaint in writing (i.e. email, letter, or in person). Whichever format the written complaint is received shall be processed in accordance to the appropriate section (UTPD, 2007 § V.B.4).

*Anonymously.* Anonymously received complaints, in any format, should be received and investigated (Reiter, 2006, pp. 1.8-.8; Rhodes, 2009, p. 5; Thurnauer, n.d., p. 2; UTPD, 2007, § V.B.6). When the member receives an anonymous complaint, they shall reduce the complaint in writing providing as much detail as possible, and shall attach any correspondence received, sending it to the Fire Chief. In the event the complaint is sustained, the member who handled the receiving of the complaint shall have the complaint notarized thus effectively becoming the complainant (Reiter, 2006, p. 1.9).

**Complaint not in writing.** At times a complainant will refuse to reduce the complaint in writing. If this occurs, it should be explained that failure to do so will not necessary prevent an investigation, but will make it more difficult to come to a proper conclusion (UTPD, 2007, § V.B.5.1).

**Department Compliant.** Any complaint that is directed toward the department's operations, such as fire trucks running code in neighborhoods in the early morning, receiving a citation from code enforcement, or being displeased with the hospital the paramedics transport a family member to, should be directed to the appropriate division. These complaints are not necessarily directed towards an individual. However, in the event a policy violation or misconduct is found, the member handling the department complaint shall follow the same procedures as set forth in the internal complaint procedures.

**Internal complaints against members of the LEFD.** Internal complaints may be initiated by any member of the department who is witness to or receives information of a department employee who has violated Town or department policy or who has by his actions or omissions constitutes misconduct (Rhodes, 2009, p. 4; UTPD, 2007, § V.B.7). It is the duty of any member to report such violations or misconduct and failure to do so is considered misconduct in itself (Reiter, 2009, p. 1.2). As with all complaints, the observed or obtained information is required to be placed in writing on a department memorandum form, including the policy violated and incident details, and forwarded through the chain-of-command. In the event the complaint is against the direct supervisor, the complainant may go to the next level of supervision above the subject member (Rhodes, 2009, p. 4; UTPD, 2007, § V.A).

It is imperative for any member who observes any member in incidents of patient neglect, unnecessary use of force (law enforcement), violations of criminal statutes, other misconduct, or abuse of authority to take immediate steps to protect the recipient of the misconduct. Such incidents shall be immediately brought to the attention of the Fire Chief (Rhodes, 2009, p. 4).

**Complaint classification and investigative responsibilities.** When a complaint is received, it must be determined who has the investigative responsibility to determine the validity of the complaint. Depending on the department, some agencies automatically assign complaints to the internal affairs division. This practice, however, has the unattended consequence of removing the duties of firefighter development away from the supervisors when it involves minor complaints (Thurnauer, n.d., p. 2). Other agencies will assign complaints either to supervisors of the employee subject to the complaint or to the internal affairs unit, depending on the level of severity of the complaint (IACP, 2010, pp. 20 and 72). It should be determined at the time of policy development what these levels are, from procedural violations to gross

misconduct, and who they will be assigned to. In order to determine investigative responsibility and to classify the level of severity of complaints, a classification schedule has been created (IACP, 2010, p.72).

Complaint classifications will be assigned to any complaint that is to be investigated. Classification will determine the investigative responsibility; however, at no time shall the complainant be assigned as the investigator (Tex. Loc. Gov't Code, 2007, § 143.123). For the purpose of this policy, there are three levels of complaints. Class 1 Complaints are the most serious of complaints and typically include criminal misconduct or repetitive complaints of the same manner as previously sustained investigations (Rhodes, 2009, p. 6). Class 1 complaints are investigated by the department's Fire Marshal. Class 2 Complaints are less serious in nature, but do concern violations of department policy. Class 2 Complaints may, if sustained, result in the assessment of negative discipline against the accused member. Class 2 Complaints are assigned for investigation as deemed fit by the Chief. Class 1 and Class 2 complaints must be reviewed and signed as acknowledgement of review by the Town's Director of Human Resources (Little Elm, 2010, Policy no. 7.01). Class 3 complaints are assigned to informal complaints, department complaints or of incidents of exceedingly minor nature (Rhodes, 2010, p.6). Sustained complaints at the Class 3 level typically result in discipline less than written and may include additional training, counseling, restitution, and/or education. Class 3 Complaints are typically assigned to the accused individual's supervisor.

**Notification to the complainant.** An individual who has filed a complaint against an firefighter or the department should be notified when their complaint is being processed, at the conclusion of the investigation, and periodically in between (IACP, 2010, p. 75).

**Notification to the member.** When the department receives a complaint on an employee, the employee should be notified that a complaint has been filed and then given the opportunity to answer to the allegations made (IACP, 2010, p. 22 and 76; Thurnauer, n.d., p.3). The notification should be in writing and include the complaint, the name of the complainant and the applicable section of the department policies that are alleged to have been violated (Tex. Gov't Code, 2005, § 614.023; IACP, 2010, pp. 22 and 76; UTPD, 2010, § V.D.2.a)). The assigned investigator shall make the notification to the employee. In the event of a Class 1 or Class 2 complaints, the notification will be made after the review of the Town's Director of Human Resources (Little Elm, 2010, Policy no. 7.01). Class 3 Complaint notifications may be given to the member at the beginning of the investigation.

*Response to allegations.* In all cases, the accused member shall answer to the allegations made and shall reduce the response in writing (UTPD, 2010, § V.e.1). In the event additional infractions of policy or misconduct are found during the members response, that member shall be allowed to answer to those allegations as they did the initial complaint (UTPD, 2010, § V.e.2).

*Prohibitions.* The accused member shall be notified that they are strictly forbidden to make contact with the complainant to avoid the appearance or true intent of persuading or intimidating them. In addition, an accused member may bring forth pertinent evidence of witnesses but at no time shall they conduct their own investigation (Rhodes, 2010, p.7; UTPD, 2010, § V.E.2.a).

*Criminal Investigations.* In the event a complaint received alleges misconduct that is a violation of criminal law, the notification to the accused member may be delayed if the notification will interfere with the criminal investigation (Tex. Loc. Gov't Code, 2007, § 143.123(e)). When the member subject is notified he will be provided with a *Garrity* Warning

which must be signed and a copy returned to the member (FLETC, n.d.; Thurnauer, n.d., pp. 3-4). Criminal investigations should precede any administrative investigation; however, it should not prevent the department from conducting an administrative inquiry (Thurnauer, n.d., p. 3).

### **Discussion**

Question one of this research deals with finding and analyzing of applicable laws which would govern a professional inquiry policy, specifically as the laws would relate to the receiving and handling of complaints. At the federal level, the literature review found the theory of due process and protection from self-incrimination as provided in the U.S. Constitution. The literature review found that due process in the Fourteenth Amendment also applies to the states of the union. However, based upon various court decisions, due process is only afforded to those public employees who have a protected property interest in their employment through written or implied contract. The courts have also ruled that property interest are created from rules at the state or local level and not created by the Constitution.

Since the Town of Little Elm has expressed in local policy that they are an at-will employer and all employees are working at the pleasure of the Town, there is no interest in property as it applies to their employment, and therefore, according to the federal courts are not entitled to the protections of the Fourteenth Amendment and due process. However, state law provides a type of due process for all firefighters in the State of Texas. The Texas Government Code provides all complaints against a firefighter must be in writing and signed by the person making the complaint. It is required that notification is to be given to the accused firefighter, per the Texas Government Code, prior to any investigation, as well as, termination or indefinite suspension cannot occur unless the complaint is investigated and evidence supports the complaint.

Another legal statute is provided in the Texas Local Government Code that deals with the investigation of firefighters. However, this law is not applicable to the Town of Little Elm and the Little Elm Fire Department as the chapter is only applicable to municipalities which have adopted the statute through a local election process. Portions of this law were utilized to provide information that was needed in the policy.

Local policies are provided by the Town that adopts the Texas Government Code, verbatim. The Town's personnel policy also provides that all complaints which result in greater than an oral warnings must be reviewed by the Town's Director of Human Resources. The LEFD policies do not provide any direction as to handling complaints on its members, and therefore, reverts back to Town policy.

The results of the research takes the theory of due process laws into account by incorporating essential elements of Texas law and local personnel policy into the development of a policy. Areas of the policy which mirror due process and the applicable laws are; requiring that all complaints are made in writing and signed, that the member subject to the complaint is notified of the complaint, and the subject to complaint is given the opportunity to answer to the allegations. Additionally, Town policy was included by creating a procedure for review by Human Resources on complaints which, if sustained, could result in discipline greater than an oral reprimand.

The research also found in the Fifth Amendment to the U.S. Constitution an individual is protected from providing testimony which could incriminate them in a criminal case. Justices in the Supreme Court case, *Garrity v. New Jersey* 385 U.S. 493 (1976) ruled that although a public employee may be compelled to answer allegations of a complaint in an administrative inquiry or face negative discipline, and since the testimony is being compelled, any statements made cannot

be used in turn in criminal prosecution. This case resulted in the development of the *Garrity* Warning. The results of the research took into account the information obtained in the literature review and included the requirement of providing the *Garrity* Warning in the event a complaint has criminal implications.

Based upon the information obtained during this research, it was found that the Fifth and Fourteenth Amendments of U.S. Constitution, Texas Government Code and local policy all govern or direct aspects of a professional standards inquiry policy as they relate to the receiving and handling of complaints. These laws are accepted by the researcher as indisputable and the researcher has included provisions in the developed policy to ensure compliance with the laws. Although the Texas Local Government Code is not codified for the Town of Little Elm, some provisions are included which assist in meeting the intent of due process and protection of self-incrimination. The inclusion of these laws in the professional standards policy on complaint reception and handling has positive implications to the LEFD by limiting liability for non-compliance.

The second research question posed the inquiry of what standards are established through the NFPA or any other accreditation agency which would provide guidance in developing a professional standards policy that specifically related to the receiving and handling of complaints. The research found that for the fire service, no standards exist on the receiving of handling of complaints against firefighters. However, it was discovered that the law enforcement profession had several guides, standards, and academic publications which covered the research topic. Specifically, the IACP and CALEA both offer standards for internal affairs policy and included pertinent information on complaints. Also reviewed was an academic handout for a

course on internal affairs for law enforcement by Leo Reiter, which like the previously mentioned standards, provided guidance on the receiving and handling of complaints.

The result of the research on existing standards, which named, answers the research question in itself, was vast and greatly influenced the development of the resulting policy. Information obtained included confirmation of the legal requirement of handling and receiving complaint including *Garrity*, the purpose and need of a policy, the format in which complaints should be submitted, handling complaints from external and internal sources, and how to delineate criminal and administrative inquiries. The effect of this research, including the literature review and following result, is the ability to support the information provided in the complaint policy as they relate to the needs of the LEFD.

The third research question solicited the policies and procedures of other departments and agencies which had established documentation on professional standards and complaint processing. Maintaining the ideology that law enforcement is more advanced in the area of receiving and handling complaints over the fire service, the researcher reviewed and analyzed the policy and procedure of two Texas law enforcement agencies, University of Texas Systems Police Department and the Little Elm Police Department. The results took into account the information and structure of these policies and manipulated them to meet the needs of the LEFD. Literature review provided results in the purpose, policy, definitions, and procedures of the final policy draft. The researcher agreed with the results as indicated in the inclusion of this information in the developed policy. The implications of the results obtained from the review of departmental policies are such that they are in compliance with state law and help formulate the text of the policy created.



### **Recommendations**

It is the recommendation of this researcher for the Little Elm Fire Department to consider the adoption of this policy in order to maintain consistency in the complaint receiving and handling process, to maintain compliance with federal and state laws and local policies, and to maintain a high level of trust in the department from its members and the community as a whole. It is further recommended that the LEFD acknowledge that this policy is a minute portion of a complete professional standards policy. In order to utilize this policy, it is recommended for the Town of Little Elm's attorney to review the policy prior to implementation. The creation of a complaint form, *Garrity* Warning, and a complaint tracking system is suggested to accompany the resulting policy of this research. Future research should be conducted on the investigative process, resulting of investigations, and disciplinary programs which include progressive discipline.

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## Appendix

### Administration

<b>Chapter</b>	<b>1</b>
<b>Subject:</b>	<b>Professional Standards : Complaint Process</b>
<b>Effective Date</b>	
<b>Approval</b>	

#### I. PURPOSE

Little Elm Fire Department (LEFD) members are expected to comply with all Town and department policies and to conduct themselves in a manner that looks favorably towards the department, on-duty and off-duty. In the event that a policy has allegedly been violated by a member of this department or the actions of a member of this department are believed to constitute misconduct by any internal or external source and a complaint is received, that complaint shall be fully investigated.

The intent of a complaint investigation is three-fold:

- a. Protection of the public: The public has a right in receiving a fair and efficient means to have their complaints heard and investigated.
- b. Protection of the department: The department's reputation is directly reflected in and evaluated by the conduct of its members. In order to maintain confidence in the community, allegations of misconduct must be consistently, fairly, and honestly investigated.
- c. Protection of the Employee: Members of the department must be protected as much as possible against false allegations of misconduct. They also should be confident that the investigation process is complete, fair and consistent through all ranks and assignments of the department.

#### II. POLICY

It is the policy of the Little Elm Fire Department to accept all complaints made from internal or external sources of alleged policy violations or misconduct of a member of this department. An investigation shall be conducted on all formal complaints.

This policy will:

- a. Provide a procedure to members on how to receive a complaint (external) against a member of the department for policy violations or misconduct,
- b. Provide a procedure to members on filing a complaint (internal) against another member of the department for policy violations or misconduct,
- c. Classify complaints that are made against members of the department and who is responsible for investigating the complaints,
- d. Provide a procedure on notifying a complainant of the status of a complaint and investigation against a member of the department, and
- e. Provide procedures on notification to the member of the department whom a complaint has been levied against.

### III. LEGAL

This policy is established to facilitate compliance with the Fifth and Fourteenth Amendment to the U.S. Constitution on due process and self-incriminations; the Texas Government Code §§ 614.021-.023, “Complaints against a Law Enforcement Officer or Firefighter”; and applicable policies of the Town of Little Elm.

### IV. DEFINITIONS

*Complaint:* an allegation(s) against a member of the LEFD that could result in disciplinary action that alleges a policy violation or misconduct.

*Complainant:* a person claiming to be a victim of misconduct, or a witness to a policy violation or misconduct of a member of the LEFD

*Department complaint:* a complaint from an external source directed towards departmental procedures or operations.

*External Complaint:* a complaint from any individual that is not a member of the LEFD

*Internal Complaint:* a complaint by a member of the department who finds policy violation or misconduct in the behavior of another member.

*Member:* an individual who is employed in any capacity with the LEFD, including full-time, part-time or volunteer.

*Misconduct:* an act or omission by an employee that is a criminal act, misdemeanor, or other conduct which may tend to reflect unfavorably upon the Town of Little Elm or the LEFD

*Policy Violation:* an act or omission that is in direct conflict of a current policy of the Town of Little Elm or the LEFD.

*Supervisor:* A member of the department, who holds the rank of, is acting or temporarily appointed to the rank of, or who is stepping-up in to the position of Lieutenant of above.

## V. PROCEDURES

### A. External Complaints against members of the LEFD

#### i. Processing Complaints

##### a. In person

An individual wishing to make a complaint in person shall be directed to a department supervisor. The supervisor shall request the complainant to complete and sign the LEFD Complaint Form.

The complaint form shall be forwarded to the Fire Chief, or his designee, for classification and investigation assignment.

If in the event that the individual wishing to make a complaint approaches a member away from the station, the member approached shall direct the complainant to fire administration/central station to make contact with an available supervisor. The member who was approach shall immediately contact his immediate supervisor of the encounter.

##### b. By letter

In the event the department receives a letter that expresses a wish to make a complaint, the letter will be directed to the Fire Chief, or his designee, for classification and investigation assignment.

The receiving investigator shall contact the complainant and obtain a written and signed statement from them.

##### c. By email

When any member of the department receives an email from an individual expressing a complaint, the receiving person shall print the email, place the copy in an inter-office envelope and forwarded the correspondence to the Fire Chief, or his designee, for classification and investigation assignment.

The receiving investigator shall contact the complainant and obtain a written and signed statement from them.

d. By telephone

When any member of the department receives a telephone call from an individual wishing to make a complaint, the receiving member shall advised them to submit the complaint in writing.

If the complainant refuses to put the complaint in writing, the complaint should be processed as provided in Section V.a.ii. of this policy.

e. Anonymously

Anonymous complaints will be investigated regardless of the above format it is received.

When any member or employee of the department receives an anonymous complaint, they shall fill out the LEFD Complaint Form with any and all information obtained. The form shall be sent to the Fire Chief, or his designee, for classification and investigation assignment.

In the event that the investigation sustains the complaint, the receiving member or employee shall be required to provide a notarized statement that the complaint was received by them and that it was received anonymously; effectively making that member or employee the complainant.

i. Complaint not in writing

If the complainant refuses to put the complaint in writing, it should be explained to them that failing to do so will not necessarily prevent an investigation from being conducted, however, that failure to provide the allegation(s) in writing will cause the matter to be more difficult to process a conclusion.

ii. Department complaint



Any complaint that is received in any manner that is related to a department complaint (i.e., fire trucks running code at 2 a.m.; code enforcement writing citations; displeasure of hospital destination) shall be directed to the appropriate division. In the event that a policy violation or misconduct is discovered against a member of the department; the member handling the department complaint shall follow procedures as set forth in Section V.b. of this policy.

B. Internal complaints against member of the LEFD

Internal complaints may be initiated by any member that witnesses or finds that a policy violation or misconduct in the behavior of another member has occurred. Complaints shall be placed in writing on a departmental interoffice memorandum form, signed and directed through the chain-of-command to the Fire Chief. The memo subject shall be designated as “Internal Record of Complaint.” In the event the alleged policy violation or misconduct is against a member who is in the member’s chain-of-command, the complaint may be taken directly to the Fire Chief.

Any member who either receives information about, or observes any member in incidents of patient neglect, unnecessary use of force (law enforcement), violation of criminal statutes, other misconduct or abuse of authority will take immediate steps to protect the recipient of the misconduct. Any and all such incidents shall be reported through the chain-of-command to the Fire Chief. If there is a need to protect the confidentiality of the information, the member may bring the matter directly to the Fire Chief.

The Fire Chief, or his designee, shall review the complaint for classification and investigation assignment.

C. Complaint classification and investigative responsibilities

Complaints classification will be assigned to any complaint that is to be investigated. Classification shall be used to determine which member is assigned to investigate the complaint. At no time shall the complainant act as the investigator.

- i. *Class 1 Complaint*: This is the most serious classification of complaint and typically involves allegations of criminal misconduct, whether overt or indigenous to the misconduct alleged. Any complaint, which on its own merit could potentially result an indefinite suspension or termination will be declared a Class 1 Complaint.

Class 1 Complaints will also be assigned to any complaint which, because of previously sustained complaint, has been enhanced to the highest level of seriousness.

Class 1 complaints are investigated by the Division Chief of Fire Prevention/Fire Marshal. Once the investigator receives a Class 1 Complaint, that complaint shall be taken to the Director of Human Resources for the Town of Little Elm for review. The Director of Human Resources shall sign the complaint where appropriate indicating that it has been reviewed.

- ii. *Class 2 Complaint:* This classification is assigned to complaints of a less serious nature, but which concerns department policy violations. This classification, could, if sustained, result in an assessment of negative discipline against the accused member.

Class 2 Complaints are investigated by the Fire Chief's designee. Once the investigator receives a Class 1 Complaint, that complaint shall be taken to the Director of human Resources for the Town of Little Elm for review. The Director of Human Resources shall sign the complaint where appropriate indicating that it has been reviewed.

- iii. *Class 3 Complaints:* This classification is assigned to informal situations or complaints of an exceedingly minor nature. If sustained, this complaint would generally result in discipline less than a written reprimand, and in most instances, will be resolved with positive discipline such as counseling, training, restitution, and/or education.

Class 3 Complaints are usually investigated by the named member's immediate supervisor.

#### D. Notification to the Complainant

The complainant of any allegation of policy violation or misconduct against a member of the department shall be kept abreast of the progress of the investigation and shall be notified at a minimum;

- i. When the investigator receives the complaint to inform them that an investigation has been initiated,
- ii. Periodically during the investigation as to the status of the investigation (not necessarily details of the investigation), and

- iii. At the conclusion of the investigation providing the findings (unfounded, exonerated, not sustained, or sustained).

E. Notification to the member of the department subject to the complaint

- i. Notification to member.

According to Texas Government Code § 614.023, a copy of a signed complaint must be provided to the individual who is subject to the complaint.

- a. Notification will be provided to the accused member by the assigned investigator.
- b. Class 1 and 2 Complaints: notification will be given to the accused member AFTER the complaint has been reviewed by the Town of Little Elm Director of Human Resources.
- c. For Class 3 Complaints, notification will be given to the member at the beginning of the investigation. An exception to this is in the event that a complaint may result in a criminal investigation (see Section V.E.iv. of this policy).

- ii. Response to Allegations.

- a. In all cases, the member subject to a complaint will provide an answer to the allegations.
- b. In the course of the response additional infractions are discovered, the accused member will be afforded the opportunity to respond to these allegations, as with the initial complaint.
- c. The member shall reduce his response in writing, signed and will be provided a copy of their response.

- iii. Prohibitions

- a. The accused member is expressly forbidden from making contact with the complainant or any potential witnesses.
- b. The accused member is expressly forbidden from conducting their own investigation; however, they are encouraged to bring forth any pertinent evidence or witnesses to the attention of the investigator.

iv. Criminal Investigations

- a. In the event that a complaint alleges misconduct that is a violation of criminal law, the notification to the accused member may be delayed if the notification will interfere with the criminal investigation.
- b. When the member subject is notified, he will be provided with a *Garrity* Warning which must be signed and a copy returned to the member.
- c. Criminal investigations should precede any administrative investigation; however, it does not prevent the department from conducting an administrative investigation.