

IDAHO STATE POLICE PROCEDURE

03.01 INCIDENT REVIEWS AND ADMINISTRATIVE INVESTIGATIONS

I. GENERAL

- A. The Idaho State Police (ISP) is accountable for the acts and omissions of all its employees. All allegations of misconduct or substandard performance are investigated in a fair and impartial manner on behalf of both the employee and the citizens of the State of Idaho.
- B. The purpose of an incident review or administrative investigation is to determine the facts as accurately as possible. Every employee must cooperate fully in departmental investigations and provide all information truthfully to those handling the review or investigation.
- C. The evaluation of each case is based on facts disclosed during the review or investigation and should be resolved at the lowest possible supervisory level, except as required by this procedure. Employee conduct and performance are evaluated specifically and narrowly as they relate to the performance of duties within the scope of employment and fitness to hold the position. Employees making false statements, or intentionally omitting information, in response to questions relating to the performance of official duties or fitness for duty may be subject to disciplinary action up to and including dismissal.
- D. Confidentiality is required to preserve the rights of individuals and responsibilities of ISP. Information obtained as a result of an employee review or investigation will only be distributed internally on an official need-to-know basis and publicly pursuant to the Idaho Public Records Act or, with the exception of compelled statements, with a law enforcement agency conducting a criminal investigation.

II. DEFINITIONS

- A. “Administrative Investigation” means the process by which information is collected when it is alleged or suspected that an employee’s conduct or behavior violates [ISP Conduct Expectation](#), procedure, training, or IDAPA rule as outlined in [IDAPA 15.04.01.190.01. Administrative investigations](#) are typically investigated by a trooper specifically trained in conducting these types of investigation and are managed by the Office of Professional Standards (OPS) Coordinator. While allegations of substandard work performance or productivity issues are generally investigated at the supervisory level within the program, allegations of this nature may become an administrative investigation based upon review by the OPS Coordinator and the program or district Major/Manager.
- B. “Complainant” means an individual or entity that makes an accusation, allegation, complaint, or charge against ISP or its employee.
- C. “Complaint” means an accusation, allegation, or charge against ISP or its employee.
- D. “Director” means the director of the Idaho State Police.

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- E. “Disciplinary Action” means an administrative action taken to address and correct unacceptable behavior, misconduct, or substandard work performance to include disciplinary suspension without pay, disciplinary demotion, disciplinary reduction in pay, involuntary transfer, and dismissal.
- F. “Incident review” means the process by which complaints, pursuits, uses of force, fleet crashes, and other potential minor procedure violations are reviewed. These reviews are typically investigated at the lowest supervisory level within the district or program. For programs with limited available personnel, the Captain/Manager or supervisor may contact the Operations Lt. Colonel for help in assigning the review.
- G. “OPS” means the Office of Professional Standards. OPS has the Director’s authority to conduct investigations into allegations of employee misconduct and to track all such complaints.
- H. “OPS Coordinator” means the supervisor/manager of OPS who is appointed by the Director.
- I. “Respondent” means an employee against whom an allegation is made.

III. INCIDENT REVIEWS

- A. Upon receipt of a complaint, the supervisor follows ISP procedure [03.02 Complaints](#).
- B. The employee’s supervisor reviewing the complaint:
 - 1. initiates an investigation into the allegations;
 - 2. adheres to the investigation actions described in Section IV. of this procedure; and
 - 3. completes the [OPS-007 Complaint Resolution/Summary Action](#) form.
- C. If the allegations in the complaint appear to rise to the level of an administrative investigation, the supervisor forwards the information to the OPS Coordinator within two (2) business days.
- D. Incident reviews are also conducted by supervisors for each pursuit, use of force, non-training firearms discharge, fleet crash and any tort claim received regarding behavior that has not been reviewed.
- E. Pursuits are reviewed pursuant to ISP procedure [06.13 Pursuits](#), and are reported using the EHF 06 13-01 Pursuit Data form.
- F. Use of force incidents as defined in ISP procedure [06.15 Use of Force](#) are reported using the [EHF 06 15-01 Use of Force Report](#).
- F. Fleet crash incidents as defined in ISP procedure [02.12 Use of State Vehicles/Fleet Management](#) section L are reported using the [EHF 02 12-04 Vehicle Crash](#) form.

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G. Tort Claims are defined in ISP procedure [03.20 Tort Claims](#).

1. Upon receipt of a tort claim filing, ISP Legal will notify the employee's Major and the OPS Coordinator.
2. In instances where a tort claim filing is the first documented report known to ISP concerning allegations of employee misconduct or substandard performance, the OPS Coordinator may, after consultation with the employee's major, assign the complaint to be reviewed pursuant to this procedure.

H. At any time during the incident review, information developed during the review may cause the investigation to be referred to OPS.

IV. INCIDENT REVIEW PROCESS

- A. Any employees involved in the incident may be required to submit a report to their supervisor. The report may be written or in the form of a documented interview/oral report.
- B. Supervisors forward all reports to the respondent's supervisor.
- C. The respondent's supervisor or the supervisor who managed the incident¹ (in the case of a pursuit):
 1. gathers any and all available information pertaining to the incident, including but not limited to, reports, recordings, documents, photographs, and memos;
 2. writes a fact-finding summary on the appropriate OPS-007 form(s) (complaint resolution, pursuit, use of force, or fleet crash); and
 3. submits all reports and the summary to the next level supervisor.
- D. The next level supervisor:
 1. reviews all reports and the summary;
 2. determines an investigation disposition of unfounded, exonerated, not sustained or sustained (see section IX. D under the Administrative Investigation Review Process of this procedure);
 3. completes their portion of the form(s); and
 4. submits all reports and the summary to the next level supervisor.
- E. Following the completion of section D above, the next level supervisor:
 1. reviews all reports and findings;
 2. determines if he or she concurs with the previous supervisor's findings;
 - a. if he or she disagrees with the previous supervisor's conclusions, he or she and the previous supervisor will try to arrive at a mutually acceptable outcome.
 - b. if a mutually acceptable outcome cannot be reached, he or she assigns the finding.
 3. determines consistency with agency procedure and takes appropriate action as follows:

¹ This will typically be a sergeant for commissioned staff.

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- a. if each of the employee's actions were within agency procedure, submit the reports and findings to the next level supervisor.
 - b. if the employee's actions constituted only minor violations of procedure that warrant coaching, counseling and/or a letter of reprimand, he or she submits the reports, findings and proposed completed coaching/counseling/reprimand recommendations to the next level supervisor.
 - c. if the employee's actions constituted violations of procedure that he or she believes warrant disciplinary action pursuant to [IDAPA 15.04.01.190.01](#), he or she submits the reports, findings, and completed portions of the appropriate OPS-007 form(s) to the next level supervisor.
- F. If the supervisor in section E above is not a Major, the appropriate Major will:
1. reviews all reports, forms, findings and recommendations;
 2. determines if he or she concurs with the previous supervisor's finding;
 - a. if the Major disagrees with the previous supervisor's conclusions, the Major and previous supervisor will try to arrive at a mutually acceptable outcome;
 - b. if a mutually acceptable outcome cannot be reached, the Major assigns the findings and/or sanction(s).
 3. The Major forwards the [OPS 007 Complaint](#) form to the Operations Lt. Colonel for final approval.
- G. Upon final approval, the Operations Lt. Colonel forwards the completed form(s) to the OPS for entry into IA Trak. The OPS notifies the submitting Captain/Manager of the final determination.
- H. The incident review must be completed within 30 business days or justification for the delay must be sent to the employee through the appropriate Major/Manager, and the employee should be notified if the incident review will not be completed within 30 days.
- I. If a letter of reprimand is recommended, it is processed in accordance with [03.08 Personnel Records](#).
- J. Any recommended disciplinary action is processed in accordance with [03.13 Progressive Discipline and Disciplinary Due Process](#).

V. ADMINISTRATIVE INVESTIGATIONS

- A. The objectives of an administrative investigation are to:
1. determine all pertinent facts;
 2. determine if ISP employees were involved in a serious violation;
 3. determine if the conduct or behavior was intentional;
 4. determine if the conduct or behavior was the result of action or inaction by the ISP, such as training needs or procedure failure;
 5. determine the reasonableness and the basis of the employee's actions; and
 6. preserve evidence.

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- B. Administrative investigations are initiated by an act or omission that, if proven true, violates [ISP Conduct Expectations](#) or procedures including but not limited to:
1. dishonesty or any breach of integrity by an employee which reflects negatively on the agency;
 2. failure to conform to a law which would constitute a misdemeanor or greater violation;
 3. harassment or discrimination involving civil rights violations;
 4. alcohol or substance abuse;
 5. a serious breach of ISP rules, procedures or other guiding documents; or
 6. any behavior as described in [IDAPA 15.04.01.190](#).

VI. ADMINISTRATIVE INVESTIGATION PROCESS

- A. Upon receipt of an administrative investigation complaint, the OPS Coordinator compiles an initial OPS complaint packet, which includes:
1. the [OPS-001 Administrative Incident Report](#) form; and
 2. a letter setting out the allegations and includes the case number, the name of the assigned investigator, ISP procedures for processing and investigating complaints, and an admonishment to the respondent to not have contact with anyone regarding the case except for the specific individuals listed in the letter.
- B. In order to maintain the integrity of the investigation and maintain confidentiality, supporting documentation or other information may not, at the sole discretion of the agency, be provided to the respondent. During the course of the investigation, the investigator may provide the employee with information or documentation as deemed appropriate by the investigator, the OPS Coordinator, and ISP Legal.
- C. The OPS Coordinator provides the respondent with the OPS complaint packet within five (5) business days unless it may compromise the investigation.
- D. The initial OPS complaint packet should be delivered to the respondent by an ISP supervisor. The supervisor should obtain the respondent's signature on the form, sign the form themselves and return the employee original signed copy to the OPS Coordinator to be maintained in the investigative file. If the respondent is represented by an attorney at this stage, ISP Legal will email the complaint packet to the respondent's attorney and request the attorney to obtain a signature on the form and return it to ISP Legal.
- E. If administrative leave is considered, the complaint is reviewed by:
1. the Director or his designee for approval; and
 2. ISP Legal for proper wording and content, if needed.
- F. If the respondent is placed on administrative leave, with or without pay, the OPS Coordinator notifies the respondent of the terms and conditions associated with administrative leave in writing.
1. Employees on administrative leave with pay:
 - a. are considered a 0800-1700 hour employee, regardless of the employee's normal shift;

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- b. must be available by phone during that time;
 - c. must be available to physically report to their assigned district office within two (2) hours;
 - d. will receive a one-hour uncompensated lunch break from 1200-1300 hours; and
 - e. will code any activities commonly associated with vacation or sick leave, according to ISP Procedure [03.15 Time Management/Reporting/Use of Leave](#).
- 2. Unless notified in writing otherwise, commissioned officers on administrative leave are not to act or identify themselves as a peace officer for the State of Idaho. They are not to carry a firearm capable of being concealed on their person or in their vehicle, except in a manner prescribed by law for persons other than peace officers.
 - 3. OPS notifies the elected prosecutors of counties the employee works in, and/or which the employee has current subpoenas for, of the change of duty status.

VII. OPS COORDINATOR RESPONSIBILITIES

The OPS Coordinator will:

- A. enter all administrative investigations and incident reviews into the computerized tracking system (IA TRAK);
- B. monitor all administrative investigations of ISP employees;
- C. ensure all administrative investigations are complete, objective, and consistent;
- D. assign the case to an investigator after considering:
 - 1. the complaint or allegations against the employee; and
 - 2. any relationship between the respondent and the investigator.
- E. monitor the investigation to ensure timely completion including:
 - 1. reporting progress to the appropriate Major/Manager and the Director monthly; and
 - 2. if the investigation is not completed within 45 business days, reporting progress to the respondent and the respondent's supervisor and providing subsequent monthly progress reports.
- F. prepare and maintain the final administrative investigation case file;
- G. ensure the proper outcome notification is made for all administrative investigations;
- H. ensure any contemplated disciplinary action is consistent with similar cases;
- I. respond to any public records request concerning an administrative investigation as appropriate under ISP procedure 02.06 Public Records Requests;
- J. notify POST within fourteen (14) days of learning a trooper has been charged with a felony or misdemeanor;

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- K. notify elected prosecutors of the updated change of duty status, and whether there is potential Brady/Giglio material, when needed; and
- L. after consultation with Legal, notify Risk Management, if needed, and
- M. seek an extension of time as appropriate per DHR statutes or rules.

VIII. ADMINISTRATIVE INVESTIGATOR RESPONSIBILITIES

- A. The investigator gives the investigation priority status to ensure timely completion and verifies that the respondent received the initial OPS complaint packet.
- B. The investigator will:
 - 1. review the [OPS-001 Administrative Incident Report](#) and other documents;
 - 2. develop an investigative plan concentrating only on the allegations outlined in the OPS-001. If other potential procedure violations or criminal misconduct are identified during the course of the investigation, bring them to the attention of the OPS Coordinator; and
 - 3. maintain confidentiality regarding the investigation.
- C. Administrative Investigation Advisements.
 - 1. Prior to an administrative investigation interview, respondents should receive an administrative investigation advisement ([OPS-006 Administrative Investigation Warning](#)), commonly referred to as the “Garrity Warning.”
 - 2. Once the OPS-006 Administrative Investigation Warning form is delivered and signed, neither the respondent’s truthful statements nor information or evidence gained by those statements can be used against the employee in subsequent criminal proceedings, if any; however, the statements may be used against the employee in ISP disciplinary or personnel proceedings.
 - 3. ISP employees identified as potential witnesses may receive an administrative investigation witness advisement [OPS-005 Witness Guide](#) prior to an investigative interview.
- D. Interviews.
 - 1. The investigator will schedule interviews in advance.
 - 2. Interviews should generally be no more than 4 hours in length, including time for breaks.
 - 3. At the beginning of the respondent’s interview when appropriate, the investigator will serve the employee with the [OPS-006 Administrative Investigation Warning](#) form.
 - 4. All interviews will be recorded and the recordings will be maintained as evidence.
 - 5. The investigator should instruct all agency employee witnesses not to disclose any of the information discussed in the interview.
 - 6. A respondent may request to have counsel present during an interview provided:
 - a. counsel is available to attend the interview within a reasonable period of time;
 - b. the role of counsel during the interview is that of an observer.
 - c. Counsel may:

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- i. consult with the respondent prior to the interview;
- ii. ascertain the allegations at the outset of the interview;
- iii. obtain statements from or question the respondent at the conclusion of the investigator's interview; and
- iv. may not interfere with or impede the interview process and may be excluded from the interview if his or her behavior becomes disruptive.

E. Evidence.

1. The investigator may request evidence testing, as appropriate;
2. The investigator will collect and preserve any pertinent evidence;
3. Digital evidence and documents are stored electronically in the administrative investigation case file. Such evidence gathered by the investigator is submitted to the OPS Coordinator for electronic storage, therefore no chain of custody or evidence packaging is necessary.

IX. ADMINISTRATIVE INVESTIGATION REVIEW PROCESS

- A. At the conclusion of the investigation, the investigator forwards the report and other pertinent documentation to the OPS Coordinator.
 1. The investigator submits an original case file electronically including any attachments and exhibits.
 2. The case file is stored on the OPS server.
- B. If the respondent leaves ISP employment prior to being interviewed by the investigator, the investigation is terminated and the OPS Coordinator closes the case, otherwise the OPS Coordinator forwards the case for review.
- C. The OPS Coordinator assigns a First Level Reviewer, generally a Captain or Manager.
- D. The First Level Reviewer:
 1. reviews the investigation;
 2. may request further investigation through the OPS Coordinator;
 3. completes the Level One Review Summary and assigns one of the following dispositions for each of the allegations:
 - a. **unfounded** – the investigation reveals that the alleged act or acts complained of did not occur or the individual named in the complaint was not involved;
 - b. **exonerated** – the investigation reveals that the alleged act or acts did occur, but were justified, lawful and proper:
 - i. proper conduct – the action was consistent with agency procedures and the complainant(s) was not wronged;
 - ii. policy failure – the action was consistent with agency procedures, but the complainant(s) was wronged;
 - c. **not sustained** – the investigation fails to reveal sufficient evidence to either support or disprove by a preponderance of the evidence the allegation(s) made in the complaint;

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- d. **sustained** – the investigation reveals a preponderance of evidence to support the allegation(s) made in the complaint.
 4. forwards the completed summary to the OPS Coordinator.
- E. After the First Level Reviewer completes the appropriate summary form, the OPS Coordinator initiates a Level Two Review by:
1. conducting a check of IA Trak for any previous events for the employee; and
 2. notifying the Level Two Reviewers of the completion of investigative file and review summaries.
- F. Level Two Review Process.
1. The Level Two Reviewers consist of Headquarters Command Staff.
 2. The Level Two Reviewers will:
 - a. review the entire contents of the case file and the First Level Review Summary;
 - b. consider any additional information contained in IA Trak; and
 - c. make a sanction recommendation.
 3. If a letter of reprimand is recommended, it is processed in accordance with [03.08 Personnel Records](#).
 4. When disciplinary action is contemplated, the process outlined in ISP procedure [03.13 Progressive Discipline and Disciplinary Due Process](#) is implemented.
 5. The OPS Coordinator completes a Level Two Summary Form and, where the issuance of a Letter of Reprimand or Notice of Contemplated Action is needed, consults with ISP Legal.
 6. Where sanctions not rising to discipline or the issuance of a Letter of Reprimand are recommended, the OPS Coordinator drafts the documentation and either serves the employee or has the district captain or program manager serve the employee.
 6. In the event there are no “sustained” findings, the OPS Coordinator or his designee:
 - a. notifies the employee and the supervisor of the finding and that the investigation is concluded;
 - b. notifies the complainant that the investigation is concluded;
 7. Based upon the circumstances of the complaint and at the sole discretion of the agency, the entire case file or portions thereof may or may not be provided to the employee.
- G. If policy violations are identified during the review process that are outside the scope of the original administrative investigation, the OPS Coordinator may:
1. amend the OPS 001 form to include the identified procedure violations;
 2. open a new administrative investigation; or
 3. in coordination with the Chief of Operations, initiate an incident review.

X. OTHER INVESTIGATIONS

- A. Criminal Investigation.
1. Any related criminal investigation supersedes the administrative investigation. The administrative investigation should not commence until either a declination letter is received from the prosecuting attorney, the criminal investigation has been finally

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adjudicated or, in rare circumstances, when the criminal prosecutor agrees that the Administrative Investigation can proceed.

2. Assigned OPS investigators:
 - a. do not participate in any interviews conducted during the criminal investigation;
 - b. monitor the progress and completion of the criminal investigation; and
 - c. at the conclusion of the criminal investigation, communicate with the OPS coordinator regarding whether additional investigation is needed for the administrative investigation.

B. Civil Rights Investigation.

1. ISP acknowledges that the federal government has authority to conduct an independent investigation to identify any civil rights violations that may have occurred.
2. ISP will not request any employee to confer with federal investigators without the advice of counsel. The deputy attorneys general (DAGs) who represent ISP shall not provide legal advice to employees for civil rights investigations.

XI. OPS EXCULPATORY EVIDENCE RESPONSIBILITIES

- A. To ensure protection of the due process rights of criminal defendants, the OPS maintains and, either affirmatively or upon request, provides information concerning an employee whose credibility, honesty, bias or competence may be compromised based on their disciplinary history or criminal activity.
 1. Information is affirmatively provided in those instances where, based upon a finding or conviction, an employee has been determined to be dishonest, biased, or otherwise impeachable as a witness.
 2. Information is provided upon request when that request is lawfully made, the employee will most likely be called to testify in a pending criminal or civil lawsuit, or at the request of a prosecutor.
- B. ISP will pursue in-camera hearings, protective orders, and other means allowable by law to try to protect the confidentiality of the records.

XII. RECORD RETENTION PROCESS

- A. While complaint investigation files may be exempt from disclosure to the public pursuant to Idaho Code §§ 74-124 and 74-106(1), this does not preclude the use of this information by ISP for management purposes or de-identified information for statistical purposes.
- B. Retention criteria of Administrative Investigation and Incident Review files are listed in ISP procedure 02.07 Records Management retention schedule.
- C. Following the final closing of an Administrative Investigation, the digital case file is maintained on the OPS server.

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- D. Any physical evidence is maintained in accordance with ISP procedure [06.09 Evidence and Property](#).
- E. Incident Reviews are processed and stored as follows:
 - 1. District/program managers or their designee scan or save data to the electronic Incident Review filing system. Records shall include all necessary information, including, but not limited to, videos, audio recordings, documents, emails, and photographs relevant to the corresponding investigation.
 - 2. Each District/Program Manager will ensure the electronic files are the current versions of the original record. One (1) business day after the record is uploaded to the Incident Review filing system, any original documents may be destroyed.