

Peace Officer Rights in Disciplinary Investigations

2.08.01 PURPOSE

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

2.08.02 POLICY

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

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

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

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

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

References

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