



Tulsa Police Department

This policy statement and the procedures thereunder are intended for Police Department use only. The policies, procedures, and regulations are for internal Police Department administrative purposes and are not intended to create any higher legal standard of care or liability in an evidentiary sense than is created by law. Violations of internal Police Department policies, procedures, regulations, or rules form the basis for disciplinary action by the Police Department. Violations of law form the basis for civil and/or criminal sanctions to be determined in a proper judicial setting, not through the administrative procedures of the Police Department.

Policy # 304B

Effective Date 02/23/2010

Policy Name Pre-Action Hearings

Approved Date 02/23/2010

Approved by *Wendell Franklin, Chief of Police*

Previous Date 08/15/2003

PURPOSE OF CHANGE:

To update policy format.

POLICY:

Whenever an employee of the Tulsa Police Department is the subject of an investigated complaint that could result in suspension, demotion, or termination, the employee will have the right to a pre-action hearing. Normally no pre-action hearing is necessary if discipline less than suspension, demotion, or termination is imposed. Generally, pre-action hearings will be conducted in accordance with City of Tulsa Personnel Policies and Procedures, Section 413, Suspensions and Demotions, and this policy. In addition, for employees represented by the American Federation of State, County and Municipal Employees (AFSCME), pre-action and pre-termination hearings will be conducted in accordance with the current collective bargaining agreement. If an employee desires, they may waive the right to a hearing.

The purpose of a pre-action hearing is to provide the employee an opportunity to hear and review the charges and supporting evidence against them and to allow the employee an opportunity to explain their actions prior to a final disciplinary decision.

Although a pre-action hearing is not an adversarial hearing, an employee may attend with a representative or legal counsel if desired. All sworn police personnel may appeal or grieve any disciplinary action taken against them in accordance with the current *Collective Bargaining Agreement*, Article 7, *Grievances and Arbitration*. Non-sworn personnel must follow the appeals and grievance process set forth in the *City of Tulsa Personnel Policies and Procedures*, Section 400, *Separations, Disciplinary Actions, and Grievances*, and, where applicable, the current *AFSCME Collective Bargaining Agreement*, Article 10, *Grievance and Arbitration Procedure*.

SUMMARY: Procedures for pre-action hearings.

APPLIES TO: All police personnel

DEFINITIONS: None

PROCEDURES:

1. When division commanders (or above) are presented with investigated complaints that could result in suspension, demotion, or termination, division commanders will schedule a pre-action hearing. When the initial investigation reveals that termination may be warranted, the employee will have the right to a pre-termination hearing conducted by the Chief of Police or his designee in lieu of a pre-action hearing in accordance with the *City of Tulsa Personnel Policies and Procedures*, Section 406.2, this policy, or the relevant collective bargaining agreement. Recommendations for termination will be forwarded to the Chief of Police for a pre-termination hearing with a pre-action hearing possible, but not required.
2. An *Interoffice Correspondence* will be prepared notifying the employee of the scheduled pre-action hearing and will be forwarded through the chain of command. A minimum of five working days will be allowed for the

employee to make preparations.

3. Include the following information in the Interoffice Correspondence:
 - a. The date, time, and location of the hearing.
 - b. The purpose of the hearing and the charges involved.
 - c. The employee's right to a representative or legal counsel.
 - d. That the employee will be given an opportunity to explain or mitigate the charges.
 - e. A waiver which outlines the employee's right to waive a pre-action/pre-termination hearing.
4. A copy of the Interoffice Correspondence will be forwarded to the employee's Bureau Deputy Chief.
5. The employee's supervisor will complete a Pre-Action History Report as follows:
 - a. Consult the employee's divisional and departmental personnel files, RIMS and any other relevant database, and the most recent Performance Evaluation when preparing the report.
 - b. List all commendations and any sustained complaints that meet contract guidelines in reverse chronological order, making the most recent entry first.
 - c. List the employee's performance strengths and weaknesses as indicated by the most recent Performance Evaluation.
6. A copy of the Pre-action History Report will also be given to the employee at least 5 days prior to attending the pre-action hearing. The *Pre-action History Report* and other related documents will be forwarded through the employee's immediate chain of command for review. After the review, the report will be forwarded to the Division Commander.
7. The pre-action hearing for personnel not represented by AFSCME will be conducted by the Division Commander or designee. Pre-action hearings for personnel represented by AFSCME will be conducted by a certified hearing officer pursuant to the Collective Bargaining Agreement. The hearing will include the following:
 - a. A description of the nature of the investigation (issues, sources, results, etc.).
 - b. An explanation of the charge and any evidence in reference to the complaint.
 - c. An opportunity for the employee to explain their actions relating to the issues and charges.
 - d. An opportunity for the employee's chain of command to attend and/or make a presentation at the hearing.
8. If the employee is a captain, the employee's Bureau Deputy Chief (or designee) will conduct the hearing. If the employee is a division commander or above, the Chief of Police (or designee) will conduct the hearing.
9. Following the pre-action hearing:
 - a. The recommendations for disciplinary action, if any, will be documented on the *Complaint History/Recommendations Form*.
 - b. An *Interoffice Correspondence*, addressed to the Chief of Police, will be completed by the Division Commander or designee and will contain the following information:
 - 1) The charges against the employee.
 - 2) The date, time, and location of the hearing.
 - 3) The persons present at the hearing.
 - 4) A description of the hearing, including the employee's explanation of their actions.
 - c. The *Interoffice Correspondence* and the *Complaint History/Recommendations Form* will be forwarded to the employee's Bureau Deputy Chief.
 - d. The Bureau Deputy Chief will review the *Complaint History/Recommendations Form* and related documents and record any recommendations for disciplinary action on the back of the report in the appropriate section.

- e. The *Interoffice Correspondence* and the *Complaint History/Recommendations Form* with recommendations will then be forwarded to the Chief of Police.
- f. The Chief of Police will review the reports and make the final determination.
- g. If final disciplinary action does not include suspension, demotion, or termination, an *Interoffice Correspondence* from the Chief of Police will be issued advising the employee of the final decision.
- h. If the final disciplinary action includes suspension, demotion, or termination, a Personnel Order will be issued to the employee informing them of the final decision in accordance with Policy 301B, *Directives, Departmental Roster, and Administrative Review*.
- i. If a pre-action hearing results in the recommendation of termination, the employee will also have the right to a pre-termination hearing conducted by the Chief of Police or designee.

REGULATIONS:

- 1. Unless employees have signed the waiver on the interoffice notification that the Division Commander presented them, they shall attend a pre-action/pre-termination hearing.

REFERENCES:

City of Tulsa Personnel Policy and Procedure, Section 400, *Separations, Disciplinary Actions, and Grievances* 301, *Written Directives*

304A, Complaints Against Police Employees

FOP Collective Bargaining Agreement, Article 7 and Appendix B

AFSCME Collective Bargaining Agreement, Article 9

CALEA 26.1.4, 26.1.5, 26.1.6