

**OFFICE OF INVESTIGATIVE SERVICES
POLICY AND PROCEDURE #830**

CONDUCT OF INTERNAL INVESTIGATIONS

POLICY:

The investigation will be conducted in a timely, efficient, thorough, and legal manner. The investigator should always focus on the facts of the case and should not allow conjecture, unsubstantiated opinion, or bias to affect the investigation.

Interviews of subjects and witnesses will be conducted in an effective manner. If physical evidence is collected, the chain of custody will be preserved to ensure the evidence will be properly admissible in a subsequent legal or administrative proceeding. A **Property/Evidence Control Record** will be completed any time evidence is collected by an investigator.

EMPLOYEE INTERVIEW GUIDELINES:

In the majority of internal investigations, the subject of the investigation will be a DHR employee the employee/subject of the investigation should be interviewed at the conclusion of the investigation when possible. The investigator should already have the evidence to make the case without the testimony of the suspect/employee.

Before interviewing the employee, the investigator should build the case using all investigative resources and evidence gathering techniques. When employee interviews are determined essential, the following guidelines will be followed:

- The investigator will schedule an interview with the employee. If the employee refuses to meet with or otherwise cooperate with the investigation, the investigator should consult the supervisor or Chief of Investigations before proceeding further.
- At the beginning of the interview, the investigator will provide identification as an OIS investigator, and state the purpose of the interview.
- The investigator should ask if the employee would be willing to answer some questions. If the employee agrees, the investigator will continue the interview and obtain relevant personal data, including but not limited to, full name, personal and/or business address, and occupation from the interviewee.
- If the employee refuses, the investigator will inquire why the employee does not wish to answer the questions.
- If the employee refuses to answer any questions, the interview should be terminated.
- The investigator should make a concentrated effort to obtain all information possible on the first contact.

The employee will not be told they must answer questions or face disciplinary action unless this has been pre-arranged with the supervisor or Chief of Investigations:

- Employees cannot be disciplined for refusing to answer (incriminating) questions unless they have been assured that their answers will not be used against them in any future criminal proceeding as stated in *Garrity vs New Jersey 585 US 493 (1967)*.

CONDUCT OF INTERNAL INVESTIGATIONS (continued)

- Statements obtained under threat of removal from office are coerced and are therefore protected against use in any criminal prosecution.
- Answers must be criminally incriminating for Garrity to be required.
- A **Garrity Warning** form will be completed any time an employee is compelled to answer questions.

Normally, the employee will be compelled to answer questions or face disciplinary action only in the following situations:

- The violation is of a DHR policy only and does not involve a violation of law.
- The violation is a violation of law, but is so minor that it will be handled administratively and not criminally.
- The violation of law normally would be prosecuted, but for reasons beyond control of the investigator, the evidence is not sufficient to support criminal charges. The investigator has exhausted all investigative options, and there is no possibility of criminal prosecution. The testimony of the employee is essential for building a case that can be handled in an administrative manner.

FIELD INTERVIEW SHEET/TAPED INTERVIEW:

When an interview is conducted with a witness or suspect, the **Field Interview Sheet** may be completed and attached as an exhibit to the internal investigation report. If the interview is taped, reference can be made to the tape in the narrative section of the form. A transcript of a taped interview may be required. In any case, the tape must be preserved and identified as evidence.

THIRD PARTY INVOLVEMENT:

The involvement of third parties is not recognized during an internal investigation of a DHR employee. Third parties include, but are not limited to: employee's relatives, friends, acquaintances, representatives of professional associations, those who are not considered in a "need to know" status, and attorneys.

Officials representing the Department may discuss employment matters with third parties only in certain instances, such as: hearings conducted by the Office of State Administrative Hearings, settlements, or court litigation.

See DHR Personnel Policy #107 for complete reference of this policy.

EMPLOYEE SUSPENSION PENDING INVESTIGATION:

As a general rule, DHR employees may be suspended for 30 days with pay pending the outcome of an investigation. In some situations, the suspension period may be extended. This is a personnel decision initiated by the Director or appointing authority of the office in which the investigation is being conducted.

Certain county departments or offices that administer DHR programs do not have a provision for suspending an employee under investigation, in which case this action is not available.

The DHR policy regarding suspensions with pay pending an investigation is referenced in the DHR Personnel Policy #1601-A.

GBI CRIME LAB:

The Georgia Bureau of Investigation may be used to provide handwriting analysis and examination for latent fingerprints. The GBI Evidence Submission Form is online: www.ganet.org/gbi/subinstruct2.html

POLYGRAPH/COMPUTER VOICE STRESS EXAMINATION PROCEDURES:

During the course of the internal investigation, the Inspector may find it necessary to request a polygraph or Computer Voice Stress examination. If the subject is a DHR employee, the following procedures will be followed:

1. The Inspector will contact the Director of that agency and obtain approval for the polygraph to be administered. The requesting agency is responsible for initiating, directing, and requesting the employee to submit to a polygraph or Computer Voice Stress examination.
2. The Inspector will contact the nearest available Georgia Bureau of Investigation Office to schedule the polygraph examination. For assistance in determining the nearest GBI Office, contact GBI Headquarters Polygraph Unit at 404-244-2569. The Inspector will contact the SAC of the OIS Special Investigations Unit to schedule a Computer Voice Stress examination.
3. Different divisions/offices within DHR may have their own policies regarding polygraph or Computer Voice Stress procedures. For example, Regulatory Services and Mental Health, Developmental Disabilities, and Addictive Diseases have specific policies. In general, most Directors of DHR Offices will provide an employee under investigation with a written mandate to cooperate with the investigator and submit to a polygraph or Computer Voice Stress examination as a condition of continued employment. Even if the subject of the investigation voluntarily agrees to take a polygraph or Computer Voice Stress examination, a written directive from the employee's superior is required.
4. Prior to the polygraph or Computer Voice Stress examination, the Inspector will negotiate one of three statement forms with the subject of the investigation. Each statement form must be explained to the subject, however, administration of the polygraph or Computer Voice Stress examination is not contingent on the subject signing any of the forms. A brief description of the three statement forms is as follows:
 - **Understanding** - By signing this form the subject indicates an understanding of constitutional rights in the matter and freely and voluntarily agrees to submit to a polygraph or Computer Voice Stress examination.
 - **Voluntary Stipulation** - By signing this form the subject indicates an understanding of constitutional rights, voluntarily agrees to submit to a polygraph or Computer Voice Stress examination, and further stipulates the results of the polygraph or Computer Voice Stress examination may be used in any proceeding or hearing.
 - **Refusal to Submit to Polygraph or Computer Voice Stress Examination** - By signing this form the subject indicates that refusal to comply with the DHR order will result in dismissal from employment.

If the Inspector finds it necessary to request a polygraph or Computer Voice Stress examination for a non-DHR employee, the **Polygraph/Computer Voice Stress Appointment Notification** form may be used to notify the individual of the scheduled time and place of the exam. The Inspector will clear any Polygraph or Voice Stress examination of a non-DHR employee with the Director, Assistant Director, or Chief of Investigations.