3-41 COMPLAINTS INVOLVING DEPARTMENT POLICY OR PERSONNEL

3-41-1 Purpose

The purpose of this policy is to inform all employees and the public of procedures for accepting, processing, and investigating allegations of employee misconduct. The definitions, procedures, and rules outlined below are intended to provide guidance, clarity, and define responsibilities for the investigation of complaints. For additional information on Internal Affairs procedures, refer to the Internal Affairs Division (IAD) SOP.

3-41-2 Policy

The Department will ensure that all complaints concerning employee misconduct, policies, procedures, and tactics are thoroughly investigated. The Department will accept and fairly, impartially, and openly investigate all complaints of employee conduct to determine the validity of allegations and to impose any disciplinary actions that may be justified in a timely and consistent manner.

3-41-3 Definitions

A. Apparent Criminal Misconduct

Apparent criminal misconduct is an act or omission that violates United States or New Mexico State criminal codes, with the exception of minor traffic violations. Minor traffic violations are defined as violations of NMSA Section 66-7-1 et seq. except, Driving While Intoxicated (DWI), Reckless Driving, Leaving the Scene of an Accident, and Vehicular Homicide. Parking violations are not apparent criminal misconduct.

B. Complaint

A report of an act or omission allegedly committed by Department personnel that constitutes a violation of Department policies, rules, or procedures, an alleged violation of local, state, or federal law, or an allegation that Department policies, procedures, and/or rules are deficient, defective in implementation or unconstitutional in practice. There are two types of complaints, civilian police complaints and internal complaints.

C. Civilian Police Complaints (CPCs)

1. Civilian police complaints are complaints originating externally from non-Department personnel.

2. All civilian complaints are forwarded to the Civilian Police Oversight Agency (CPOA) for investigation. The CPOA will investigate civilian complaints unless apparent criminal misconduct is identified by the CPOA.

3. Complaints indicating apparent criminal misconduct will be administratively investigated by IAD and, if appropriate, criminally investigated by the appropriate criminal investigative unit or agency.

4. Civilian police complaints are assigned CPC numbers. The format is CPC, year, hyphenated unique six-digit number, for example, CPC16-123456.

5. CPOA policy and procedures are not governed by the Department; however, they follow the City Ordinance Section 9-4-1 et seq., Albuquerque Police Officers' Association Collective Bargaining Agreement (APOA CBA), and Department policy.

6. Civilian Police complaints may be resolved through mediation or investigation.

7. The Department will track allegations regarding misconduct involving civilians who are homeless and/or have behavioral health issues, mental illness or disorders, whether or not it is related to a complaint.

8. The information relating to alleged misconduct is obtained from the CPC form and tracked through the software programs IAPro/BlueTeam.

D. Civilian Police Oversight Agency (CPOA)

The CPOA has the duty to independently investigate all civilian complaints.

E. Dispositions

The investigator will identify every applicable SOP section relevant to the issue raised in the complaint (issues of concern) during an investigation of misconduct and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation.

1. Unfounded

Investigation classification when the investigator(s) determines, by clear and convincing evidence, that alleged misconduct did not occur or did not involve the subject officer.

2. Sustained

Investigation classification when the investigator(s) determines, by a preponderance of the evidence, the alleged misconduct did occur by the subject officer.

3. Not Sustained

   Investigation classification when the investigator(s) is unable to determine one way or the other, by a preponderance of the evidence, whether the alleged misconduct either occurred or did not occur.

4. Exonerated

   Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training.

5. Sustained Violation Not Based on Original Complaint

   Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur.

6. Administratively Closed

   Investigation classification where the investigator determines:
   - the policy violations of a minor nature and do not constitute a pattern of misconduct (i.e. a violation subject to a class 7 sanction, with no other pattern or history of misconduct);
   - the allegations are duplicative;
   - the allegations, even if true, do not constitute misconduct; or
   - the investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile. Such complaints may be reopened if additional information becomes available.

F. Formal Investigation

   A continuation of the preliminary investigation. In a formal investigation, the assigned investigator(s) will conduct and document formal interviews with fact witnesses, identify, collect and evaluate applicable evidence including written and other tangible materials, and compile the investigator's findings into a written report that includes a narrative, summary of the evidence, and dispositions.

G. IAD

   Acronym for Internal Affairs Division.

H. IAS

   Acronym for Internal Affairs Section. IAS is a section within IAD.

I. Internal Complaints

Internal complaints are complaints made by APD personnel alleging misconduct by another employee. An Internal Complaint ("I number") is assigned to internal investigations. The format for the internal complaint is a capital "I" followed by the last two numbers of the year then a hyphenated unique six-digit number, for example, I09 123456

J. Investigator

Any Department employee (IAD or Chain of Command), CPOA employee, or contracted external investigator charged with conducting an administrative investigation of either a CPC or internal investigation.

K. Mediation

Mediation is the process of resolving a conflict through discussion, negotiation and compromise, without formal investigation or fact-finding. Mediation is appropriate when a complaint does not present misconduct, but instead indicates interpersonal conflict or a civilian's misunderstanding of department policy and procedures.

L. Misconduct

A violation of departmental policies or procedures; violation of federal, state, or local criminal laws; constitutional violations, whether criminal or civil; violation of personnel rules; or violation of administrative rules or regulations.

M. Preliminary Investigation

The initial inquiry into the nature of the complaint, the direction the investigation should take, and the identification of the resources needed to complete the investigation. A preliminary investigation shall be fully conducted to determine whether the complaint should be formally investigated by the chain of command, IAD, or may be resolved through mediation, or administratively closed. A CPC is forwarded to the CPOA without an IAD/APD preliminary investigation. The CPOA may conduct a preliminary investigation on a CPC.

3-41-4 Procedures

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A. Anti-retaliation Policy

1. Department personnel are required to report misconduct and to encourage members of the public to report misconduct in accordance with this policy.

2. Discouraging either Department personnel or members of the public from reporting misconduct is prohibited.

3. Department personnel may not take any intentional adverse action against any individual or group (including both Department personnel and members of the public), in response to that individual or group:

   a. making or supporting a complaint; or
   b. testifying, assisting, or participating in any manner with an investigation.

4. Retaliation includes, but is not limited to, threats, intimidation, coercion, or other adverse action against any person in the workplace or community.

5. Retaliation against personnel who report misconduct or who cooperate with an investigation of misconduct is grounds for discipline, up to and including termination of employment.

B. Civilian Police Complaint (CPC) - Process

1. Resources

   All Department personnel will familiarize themselves with the resources available to assist civilians with their complaints against the department and/or its personnel. The resources are:

   a. The CPOA phone number is (505)924-3770.
   b. The CPOA website is https://www.cabq.gov/cpoa.
   c. The CPOA email address is cpoa@cabq.gov
   d. CPC forms and brochures in English and Spanish are located at all APD substations, libraries, IAD, community centers, APD headquarters, and the CPOA office.
   e. All officers in marked police vehicles will carry CPC forms in English and Spanish. Officers will provide the CPC form to anyone who indicates that they are making a complaint or would like to make a complaint regarding Department personnel or policy.
   f. Civilian complaints can be entered into BlueTeam software without needing the CPC form.

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2. Department Personnel Treatment of Complainants

   a. Department personnel will professionally and courteously assist any civilian wishing to file a complaint.
   b. All civilian complaints will be accepted.
   c. Department personnel will notify a supervisor when a complaint is tendered.
   d. Department personnel will not discourage, intentionally misinform, or interfere with a civilian wishing to file a complaint.

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3. Telephone and In-Person Complaints at an APD Facility

   a. When a member of the public makes a complaint at an APD facility, either in person or telephonically, the APD employee contacted by the individual will notify a supervisor, who will assume the complaint intake process, and speak with the complainant.
   b. If a supervisor is unavailable, the APD employee will advise the civilian of the resources available to initiate an investigation into their complaint and, at the individual's option, assist them in completing a CPC form with as much detail as possible.
   c. The APD employee will turn the CPC form over to a supervisor before the end of the employee's shift for routing to IAD.

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4. In-Person Complaints in the Field

   a. When a civilian contacts an APD employee in person wishing to file a complaint at a location that is not an APD facility, the APD employee will advise the civilian about the resources available for initiating a complaint, provide forms if the employee is near the employee's marked APD vehicle, and offer to contact a supervisor to come out and assist the complainant with filing a complaint.
   b. The civilian has the choice of using the resources provided, or speaking with a supervisor.
   c. The employee will notify a supervisor of interest in making a complaint even if the individual elects not to have a supervisor come out.

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5. Written Complaints

   a. Complaints received by mail, electronic mail, or facsimile will be promptly forwarded to a supervisor by the employee receiving the communication.
   b. The supervisor will forward the complaint to IAD.

6. Complaints Related to a Judicial Proceeding

   a. The IAD commander, at the direction of the Chief of Police, will annually notify the Chief Judges from the Second Judicial District and Metro Court and the District Attorney's and Public Defender's Offices of the complaint process.

b. Complaints received from any of these entities will be handled as a complaint from a civilian, directed to a supervisor for intake and routing to IA, and forwarded to CPOA within three business days for investigation.
c. If complaints relating to a judicial proceeding are made by an APD employee or an employee of the City Attorney's office, they will be investigated as internal complaints.

7. Third Party or Anonymous Complaints

a. A person is allowed to file a complaint on behalf of another individual.
b. A person is allowed to file a complaint even when the person had no direct involvement or physical contact in the incident the civilian is complaining about.
c. A person is also allowed to file a complaint anonymously.
d. These types of complaints will be investigated in the same manner as any other complaint.

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8. Employees' Responsibilities for Civilian Complaints

a. Employees operating marked patrol vehicles will carry CPC forms in English and Spanish in their patrol vehicles, or if so equipped will print them on demand.
b. Employees will provide their name and identification number when requested by a civilian.
c. Employees will immediately notify a supervisor when a civilian requests a CPC form and immediately notify a supervisor when a civilian desires to make a complaint.

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d. Employees will fully cooperate with all civilian complaint investigations to include, truthfully answering all questions, providing requested City owned items/documents under their control, and reporting for interviews on time.

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9. Supervisor Duties for Civilian Complaints

a. For all complaints, supervisors will ensure that the CPC form is filled out as thoroughly as possible and hand delivered to IAD by the end of the shift following the shift in which the misconduct complaint was received.
b. The supervisor will keep custody of all paperwork should the complaint occur during a holiday, weekend, or non-business hours, then ensure the complaint is delivered to IAD at the beginning of the first business day.
c. If a supervisor is notified of a complaint about an allegation of misconduct that just occurred (i.e. the officer is still on the call or has just left the call or incident), the supervisor will take additional investigatory steps such as interviewing the complainant, gathering any relevant evidence (including tagging any relevant video for retention), identifying all potential witnesses, and identifying the employee(s) involved.

d. A supervisor may use BlueTeam software in-lieu of a CPC form for entering a complaint. The supervisor will still forward all supplemental documentation and evidence to IAD by the end of the shift following the shift in which the misconduct complaint was received.

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e. A supervisor will immediately inform the chain of command and IAD when a supervisor is notified of an allegation of apparent criminal misconduct by a Department employee. The supervisor will still forward the complaint to IAD.

f. Supervisors will respond to the scene when they are notified that a citizen has requested them. Employees will request their immediate supervisor to respond; however, when their immediate supervisor is unavailable, any other supervisor will suffice.

10. IAD Responsibilities for Civilian Complaints

a. Ensure that all CPCs received are entered into IAPro and an alert is sent to the CPOA no later than three days from receiving the complaint.

b. Confirm that any video related to the complaint is classified for retention.

C. Apparent Criminal Misconduct – Process

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1. If IAD believes that a CPC indicates apparent criminal misconduct, they will notify the chain of command, but will still forward the complaint to CPOA.

a. IAD will consult with CPOA regarding the issue.

b. CPOA will transfer the case to IAD if the CPOA investigator concurs that there is an indication of apparent criminal misconduct.

2. If at any time during the intake process or investigation of misconduct complaint intake or investigation the investigator determines that there may have been criminal conduct by any employee, the investigator shall immediately notify the commanding officer of IAD.

a. If the complaint is being investigated by the CPOA, the CPOA investigator will transfer the administrative investigation to IAD.

b. The commander of IAD shall immediately notify the Chief.

3. For all cases indicating apparent criminal misconduct, IAD will assume administrative case responsibility and will ensure the proper criminal investigative unit or agency is notified to evaluate the case for a criminal investigation.

D. Internal Department Complaints – Reporting and Assignment

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1. All officers and employees must report misconduct known to them by any Department officer or employee, including themselves, to a supervisor or directly to IAD for review and investigation.

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2. When alleged misconduct is reported to a supervisor, the supervisor will immediately document the conduct and report this information to the IAD.

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3. Failure to report or document alleged misconduct or criminal behavior will be grounds for discipline, up to and including termination of employment.

4. Any supervisor receiving an internal complaint (other than misconduct) will obtain sufficient information to assess the seriousness of the complaint and will determine if a non-disciplinary correction can be reached before initiating an investigation or referring the complaint to IAD.

   a. Non-disciplinary corrections may be pursued for minor internal complaints such as personal conflicts, attitude complaints, minor social media violations, appearance, employee-supervisor conflict, or tobacco use.
   b. Supervisors will contact the IAD lieutenant for questions concerning whether an internal complaint will be handled through non-disciplinary correction or formal investigation.

5. All internal department complaints will be investigated by an IAD investigator, a designated supervisor outside of IAD, or a contract investigator. The CPOA will not investigate internal complaints; however, the CPOA will audit and monitor all IAD investigations.

6. An internal complaint involving minor misconduct such as reporting for duty late or unprepared, missed court, or leave abuse, will normally be investigated by the chain of command.

   a. An internal complaint requiring the interviews of multiple witnesses, multiple employees from various assignments, or extensive documentation retrieval, will be investigated by IAD.
   b. The IAD lieutenant will determine if a case is to be investigated by IAD or the affected chain of command.
   c. If the chain of command disagrees with the assignment, he/she may appeal to the Chief of Police.

7. Internal complaints against IAD, the Critical Incident Response Team (CIRT) or personnel assigned to IAS or CIRT will be investigated by a designee of the Chief of Police.

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8. An internal complaint investigation shall not be conducted by any supervisor who has a direct interest in the case, e.g., if the supervisor was involved in the incident, use of force, or other actions that are the subject of the complaint, if the supervisor authorized actions that are the subject of the complaint, or if the supervisor is a witness to the incident that is the subject of the complaint.

9. An investigator will notify IAD as soon as he/she initiates an internal investigation or on the next business day.

    a. The investigator notifying IAD will provide the name of the employee who is the subject of the complaint, the allegations against the employee, date of incident, and a brief summary of the incident.
    b. IAD is responsible for notifying the subject employee by certified mail of the investigation unless the notification may hinder the investigation.

10. Any investigator conducting an internal investigation will be considered a designee of the Chief of Police and the City Attorney.

E. Internal Department Complaints - Investigation Process

1. An investigator will conduct a preliminary investigation.

    a. The investigator will write a memo to the IAD lieutenant when the preliminary investigation determines there is no need for a formal investigation. The memo to the lieutenant will detail the facts of the case and why those facts do not warrant a formal investigation, i.e. where the case has been referred to mediation, should be administratively closed, or in rare circumstances where the preliminary investigation is sufficient to make another case deposition.
    b. The IAD lieutenant will make the final decision on whether a formal investigation will or will not proceed.
    c. If additional information becomes available, the IAD lieutenant may reopen a case and order a formal investigation.

2. Internal complaint investigations will be completed in 90-days from the beginning of the formal investigation when an I number is assigned, not from the date of the incident.

    a. The 90-day period will not include review of the investigation by the chain of command.
    b. An extension of the investigation of up to 30-days may be granted, but only if the request for an extension is in writing and is approved by the Chief of Police.
    c. Review and final approval of the investigation, and the determination and imposition of the appropriate discipline, will be completed within 30 days of the completion of the investigation.
    d. An extension may be granted in extenuating circumstances, such as military deployments, officer hospitalizations, and extended absences, upon agreement by the Chief of Police or his designee and the employee or his/her representative.

3. The following guidelines should be followed when the preliminary investigation indicates a formal investigation is necessary.

   a. The investigator will be familiar with the most current applicable collective bargaining agreement before interviewing employees.
   b. If a criminal investigation is being or may be conducted, employees shall not be compelled to provide a statement and will not be provided the *Garrity* warning until after consultation with the relevant prosecuting agency.

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   c. As a condition of employment, all employees must truthfully answer questions and cooperate with administrative investigations.
   d. The formal investigation will include:

      i. Identification of the policies alleged to be violated (issues of concern).
      ii. Identification of the employee(s) alleged to have violated policy.
      iii. Identification of all potential witnesses to the alleged policy violations.
      iv. Identification of all relevant documentation that will be required to prove or disprove the allegation.
      v. Identification of what further evidence is needed, for example, photographs, canvassing for potential witnesses, and/or visiting the scene to better understand the conditions. The investigator will obtain and review these additional items before conducting interviews.
      vi. Interviewing civilian witnesses to objectively determine observations, perspectives, credibility, and physical condition at the time of the incident. The interview should be digitally recorded or a hand written statement may be obtained when circumstances prevent a digital recording. The investigator will document and thoroughly detail why a potential witness was not interviewed.
      vii. Interviewing employee witnesses in accordance with the current applicable collective bargaining agreement to objectively determine their observations, perspectives, credibility, and physical condition at the time of the incident. All employee interviews will be digitally recorded.
      viii. Interviewing the subject employee(s) in accordance with the current applicable collective bargaining agreement to objectively determine their actions, observations, perspectives, credibility, and physical condition at the time of the incident. If there is a concurrent criminal investigation, the administrative investigator will consult with the prosecuting agency prior to interviewing the subject employee. The subject employee may have a representative and/or attorney present for the interview.
      ix. Reviewing collected evidence, documentation, and interviews then determining if further evidence collection, documentation retrieval, and/or interviews are necessary.
      x. Conducting all follow up evidence collection, documentation retrieval, and/or interviews that are needed after review.
      xi. Reviewing all known facts of the investigation and determine if collateral allegations have surfaced and need to be addressed.

e. Repeat steps as necessary until all facts of the case are reasonably understood or no further information can be obtained.
f. If a criminal investigation is being or may be conducted, the investigator will not share files or information with the criminal investigator. The investigator may receive information from the criminal investigator, attend briefings by the criminal investigator, and observe interrogations by the criminal investigator only through a monitor system or one-way glass.

F. Completed Internal Complaint Case

1. The completed internal complaint report will be written as follows with variations depending on the complexity/simplicity of the case. Investigators should contact IAD to obtain the cover, tabs, and forms required:

a. The entire report will be bound with a Smead no. R129 hard cover or similar.
b. Each section will have divider tabs containing letters in sequential order; however, not necessarily starting with "A." The usual order will depend on case complexity and/or content.
c. A table of contents that identifies each tab's contents to facilitate the ease of locating information and data.
d. An investigative synopsis containing the minimum of one paragraph, sufficient enough to provide the reader with an understanding of the issues of concern and investigation.
e. The issues of concern citing the applicable SOP sections addressing the allegations and/or conduct.
f. The Supervisor Recommendation Form for supervisory comments and recommendations.
g. The investigation narrative will contain a detailed description of the evidence and why it is pertinent to the case. Interviews will be paraphrased in sufficient depth to provide the reader with all the known facts of the case. The narrative should enable the reader to make reasonable determinations and supported conclusions.
h. The investigator will describe determinations made regarding inconsistencies between witness statements and credibility. To make these determinations, the investigator may rely on general indicators of credibility, such as witness demeanor, consistency of memory, evasiveness of responses, motive to falsify, and inherent implausibility of statements. However, the investigator will not give an automatic preference for an officer's statement over a non-officer's statement, nor will the investigator disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history or any concern regarding mental illness. The investigator may consider convictions for crimes of dishonesty of any witness and the record of the subject officer for deception or untruthfulness in any other proceedings or investigations.
i. Supporting documentation will be individually tabbed records, reports, memoranda, etc. pertinent to the case. Any documentation referenced in the narrative will be included when possible.

j. Pertinent photographs, if any that accurately represent their content will be included; the location of photographs, if not included will be disclosed should the need to review them arise.
k. Digital recordings of interviews will be included to allow the reviewer to ascertain exact language, tone, and content of the interviews.
l. Any and all other items pertinent to the investigation will be included when possible, or at the minimum, their location should be documented for retrieval and/or review when applicable.
m. The disciplinary history of subject personnel involved in the investigation.
n. The investigator will include dispositions to each policy violation alleged (issue of concern), including collateral conduct. The dispositions will include justification, based on the facts of the case, for the disposition based on a preponderance of the evidence.

2. An administratively-closed investigation may be reopened if additional information becomes available. All relevant deadlines will be restarted when the investigation is reopened.

3. If a complaint is sustained, the investigator will identify and charge the employee with applicable sections of the SOP that cover the major violation. Lesser SOP violations, that are included in the major violation, should not be considered when identifying the level of sanction.

4. The investigator may write a memo documenting an investigation in lieu of a full completed case as described above when a supervisor wishes to discipline an employee with either a verbal or written reprimand, for example, a single instance of missed court requiring a verbal reprimand or reporting for duty late. The investigator will obtain approval from the IAD lieutenant for anything more complex.

G. Search of Personal and APD Property

1. Department-issued property and APD facilities are subject to search at any time.

2. An investigator may reasonably, at any time, ask for and inspect any item that belongs to the Department.

3. Tangible personal property can be searched when it is brought in for an administrative inspection or when the employee is interviewed on APD or City property. Otherwise, personal property will be searched only with permission of the owner or when a valid search warrant is issued.

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H. Cooperation with Investigation

1. Personnel are required to cooperate with IAD and CPOA investigations, including appearing for an interview when requested by an APD or CPOA investigator.

2. Department personnel are also required to provide all requested documents and evidence in the person's custody and control.

3. Investigators will ensure that the supervisor of any employee to be interviewed is notified of the pending interview.

4. The supervisor of the employee will facilitate the employee's appearance, absent extraordinary and documented circumstances.

I. Required Examinations

1. The use of any deception detection examination or technique will be in accordance with the current union contract that applies to the employee. Otherwise, such use may be allowed only by order of the Chief of Police, after all other reasonable investigative techniques were exhausted.

2. Photographs taken by employees as part of a criminal investigation may be used in an administrative investigation, as well as photographs on file with APD.

3. Employees will not be directed to participate in a line-up as part of an internal investigation. However, the results of a line-up conducted in a criminal case may be used in an internal investigation.

4. An employee is not required to disclose information regarding his or her financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

J. Maintenance and Analysis of Complaint Information

1. IAD will maintain all complaint information in IAPro.

2. This information will be electronically connected to the early intervention system.

3. The CPOA will have access to this information to review specific cases and to analyze trends.

4. The CPOA will audit and monitor all IAD investigations.

5. This data will be presented in the IAD annual report and may be used for other periodic audits or analyses by the Department.