

Charter Officer EO Complaint Procedures

1. Introduction

The City of Gainesville is committed to maintaining a workplace free of discrimination, harassment, retaliation and inappropriate behavior on the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability, or gender identity (protected characteristics).

The City can be held accountable for the acts and omissions of all its employees, particularly its supervisory and management employees. To that end, an obligation exists to our employees and the citizens of the City of Gainesville to investigate allegations of discrimination, harassment and related improper conduct.

The *Charter Officer EO Complaint Procedures* provide guidance in conducting administrative internal investigations, establish a complaint and disciplinary procedure, and outline reporting requirements for complaints of discrimination and harassment against Charter Officers, consistent with the City's Equal Opportunity Policy EO-4- Discrimination, Harassment and Conduct.

2. Objectives

The objectives of an internal investigation are to:

- A. Determine the reasonableness and basis of the complainant actions.
- B. Factually establish what happened through an investigative process.
- C. Uncover and preserve all pertinent facts and evidence so that they may be used to determine the proper disposition of allegations against the Charter Officer, including any necessary corrective actions.
- D. Determine whether there has been a violation of City policy.
- E. Report findings.
- F. Make recommendations.

3. Conditions

- A. An internal investigation will be conducted by pre-screened pool of third-party investigators, when it is alleged that discrimination, harassment, retaliation or inappropriate speech, conduct, or other inappropriate behavior as defined in Equal Opportunity Policy EO-4, has occurred or is occurring in the workplace.
- B. Prior to being sent to the independent third-party investigator, the complaint will be screened for jurisdiction. Jurisdiction is defined as: timeliness of complaint and whether the complaint is based on a protected class and a suspected violation of EO-4. If the complaint is over 180 days old, the Complainant will be referred to the Florida Commission on Human Relations or the Equal Employment Opportunity Commission.
- C. Every employee shall cooperate fully in internal investigations and provide all information to the investigator.
- D. An employee will not be retaliated against for cooperating fully with an investigation.
- E. The evaluation of each case shall be based on facts disclosed during the investigation.

4. Complaints

An EO complaint is defined as: (1) an allegation of circumstance (s) relating to specific acts or omissions which, if proven true, would amount to prohibited discrimination, harassment, or inappropriate speech, conduct, or other inappropriate behavior based on a protected characteristic; or, (2) an allegation that a policy, procedure, or practice has a disparate impact upon the terms and conditions of employment of an employee, where the employee is a member of a protected class, and who is directly affected by the policy, procedure and/or practice.

5. Intake Procedures

The Equal Opportunity Director (designee) shall be responsible for accepting EO complaints against any Charter Officer, unless the complaint is against the Equal Opportunity Director. Any EO complaint received against the Equal Opportunity Director shall be accepted by the Human Resources Director (designee). A complaint may originate from either an external or internal source and may be given in person, by telephone, or by letter.

Upon review by the Equal Opportunity Director (designee) or the Human Resources Director (designee), a date shall be established to meet with to review the allegations of the complaint if it is deemed appropriate to do so.

The Equal Opportunity Director (designee) will advise the complainant that the time limit to file a complaint is 180 days of the occurrence of the alleged discrimination, harassment, or inappropriate speech, conduct, or other inappropriate behavior. He/she will also advise the complainant of the steps of the formal complaint process and his/her right to file an administrative or civil action, through the Florida Commission on Human Relations or the Equal Employment Opportunity Commission. The complainant shall complete a Notice of Employee Rights and Filing Options Form acknowledging they were counseled on the process.

6. Formal Notice to Charter Officer and Commissioners

Formal EO complaints may be initiated upon the request of the complainant. The Equal Opportunity Director (designee) or Human Resources Director (designee) may also initiate the formal complaint process seeking relief for a named individual, or individuals who have not filed their own complaints based on a review of information submitted. Within 10 days of timely filing of a Complaint of Discrimination, the Equal Opportunity Director (designee) or Human Resources Director (designee) will provide notice to the appropriate Charter Officer(s). The Charter Officer will be notified of their rights and responsibilities and the right to retain an attorney, if they chose to.

If either party, Complainant or Charter Officer chooses to retain an attorney, communication will be held in coordination with the attorney.

After the Charter Officer has been notified of the Complaint, the City Commission will be notified, in writing, within 10 days of receipt of complaint and distributed a copy of the EO policy. During notification, the Commission will be apprised of the independent third-party investigator assigned to investigate. During this time, the complaint is subject to Florida Sunshine Laws, which means it is kept confidential until the complaint is closed.

7. Conducting a Formal Investigation

The investigation will commence, by an independent third-party investigator, within 30 days after filing of a Complaint of Discrimination. During the pre-investigation period the Equal Opportunity Director or Human Resource Director may recommend to the City Commission that the accused be placed on leave, if conditions so warrant.

During this pre-investigation period, the independent third-party investigator should identify potential witnesses and complete a preliminary search of available records and should prepare an investigative timeline, a chronology of witness interviews and an outline of questions.

During the investigation, the independent third-party investigator shall:

- A. Reiterate the City's commitment to neutrality and impartiality when interviewing all parties and witnesses, through redistribution of City policies.
- B. Only promise confidentiality to the extent allowed by law.
- C. Inform the complainant that information will only be distributed on a need to know basis.
- D. Ask the complainant for any additional witnesses and memorialize their fact statement.
- E. Inform the appropriate Charter Officer and/or their attorney that an internal investigation is being conducted, including the purpose of the investigation, the basis of the claim and who filed the complaint.
- F. Give the Charter Officer and/or their attorney the opportunity to respond to each allegation, provide relevant documentation, ask that the independent investigator contact any additional witnesses, and memorialize their fact statement(s).
- G. Ensure that witnesses offered by the complainant, the respondent, and any others that might have pertinent information are interviewed by the independent third-party investigator only as deemed necessary.
- H. Inform all witnesses that an internal investigation is being conducted independently.
- I. Inform the witnesses of the confidential nature of the investigative process and tell them not to discuss the interview with others.
- J. Memorialize witness fact statements.

The independent third-party investigator will then review the statements of the complainant, the respondent (Charter Officer), other witnesses, and other information/documentation to identify points of agreement and disagreement, and to separately list facts in dispute for continuing investigation. The independent third-party investigator should consider a re-interview of the complainant to discuss the respondent's version of events and to highlight the facts in dispute. Allow the Charter Officer and/or their attorney to submit additional information.

Absent extenuating circumstances, the independent third-party investigator should complete witness interviews within 45 days after being retained and complete the investigation of such within 100 days after being retained. If the investigation cannot be completed within that timeframe, the complainant and the Charter Officer will be notified as to why it cannot and informed as to when it will be completed.

8. Final Investigative Report

The third party investigator will analyze all of the facts, as applied to the applicable policy, to reach a conclusion and prepare a Final Investigative Report (FIR). Consideration during this deliberation should be given to issues of timeliness, patterns and practices, motivation, and truthfulness. Based on this analysis, a determination must be made concerning the outcome of the investigation. There may be (a)

cause to believe that a violation of City policy did occur, (b) no cause to believe that a violation of City policy occurred, (c) unable to substantiate.

The independent third-party investigator, Equal Opportunity Director (designee) and/or Human Resources Director (designee) will first consult with the City Attorney regarding the preliminary results to determine whether further investigation is required, or how to conclude the investigation, as appropriate.

Prior to completing the final written investigation report, the independent third-party investigator will meet with the Charter Officer and/or attorney regarding the preliminary results of the investigation. The Charter Officer or designee will be allowed to present additional information at that time.

The independent third-party investigator shall write the final investigative report and include the following sections: background, complaint, investigation, findings and recommendations. The FIR will be submitted to the Equal Opportunity Director for distribution to the appropriate Charter Officer and/or their attorney and the City Commission. The independent third-party investigator shall meet with the Charter Officer and/or their attorney, or members of the City Commission, as appropriate to discuss the FIR and clarify any questions or concerns about their investigation.

In formulating recommendations, the independent third-party investigator will:

- A. Consider the severity of the offense, policy, past practices, and the Charter Officer's employment contract, if there is a cause determination. A cause determination that a violation of the prohibitions against discrimination, harassment, inappropriate conduct and/or retaliation has occurred could also justify discipline ranging from verbal counseling to dismissal. Therefore, the recommended penalty for a cause finding under these procedures may range from verbal counseling to dismissal, depending on the circumstances involved (i.e., severity, frequency, past history, future prospects, etc.), which determination is ultimately up to the City Commission, in consultation with the City Attorney's Office.
- B. At a minimum, consider reiteration of City Policy if there is a no cause determination. Also, inform the respondent that the results did not substantiate the complaint.
- C. At a minimum, consider reiteration of City Policy and continued monitoring of the workplace if there is an unclear determination.

9. **Commission Response**

If there is a reasonable cause determination, the City Commission must discuss and make recommendations during a special City Commission meeting. During this meeting, an action plan for implementation of recommendations must be discussed and voted on.

During this meeting, the Charter Officer may speak on his/her behalf.

If there is a no reasonable cause finding, a special meeting is at the discretion of the Commission.

10. **Close the file**

All investigative records will be sent by the independent third-party investigator to the Office of Equity and Inclusion which will serve as the custodian of the investigation file, and the investigation will be closed.