

County of Orange

Agency Complaint Policy Review

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Executive Summary

On September 24, 2024, Supervisor Sarmiento requested that the Office of Independent Review (OIR) conduct a review of agency policies related to the filing of complaints for the Orange County Public Defender (OCPD), the Orange County District Attorney (OCDA), the Orange County Sheriff's Department (OCSD), the County of Orange Social Services Agency (SSA), and the Orange County Probation Department (Probation). Specifically, the OIR was asked to review how complaints from the public and employees are received, handled, and documented by each agency.

Processes in Place for Employees and Citizens to File Complaints

All five agencies rely in some part on county-wide policies and procedures to receive and handle certain types of complaints. For example, four out of the five agencies mentioned the Orange County Fraud Hotline as one of the ways that complaints can be filed with their agencies. Other county-wide processes referenced by the agencies included the Equal Employment and Anti-Harassment Policy, Americans with Disabilities Act Policy, and U-TIP Hotline.

In addition to county-wide policies and procedures, all the agencies had their own processes related to complaints. For example, some agencies had specific processes for handling personnel complaints, and some had processes for general complaints. The OCSD, SSA, and OCPD also had more specific complaint policies centered around the type of services that they provide such as bias free policing, foster care placement, and attorney representation.

Acceptance of Anonymous Complaints

Anonymous complaints related to all five agencies can be submitted through the county by utilizing the County's Equal Employment Opportunity (EEO) Compliance Line, the County Fraud Hotline, and the U-Tip Safety and Loss Prevention Hotline. These services provide the option for a caller to remain anonymous.

All five agencies also indicated that they accept anonymous complaints. Both the OCSD and OCDA have specific policies related to the filing of anonymous complaints. The SSA did not provide a specific policy, however, they did describe the numerous ways in which anonymous complaints can be filed with their agency, including calls to the Child and Adult Abuse Hotline, Quality Support Team (QST), and the SSA Director.

Handling of Anonymous Complaints

Both Probation and OCSD stated that anonymous complaints are investigated in the same manner as non-anonymous complaints against personnel. Similarly, the SSA indicated that anonymous complaints are typically escalated through the chain of command and are prioritized for review by subject matter experts and the investigation process adheres to the same protocols as non-anonymous complaints. The OCDA also referenced the chain of command, stating that anonymous complaints are assigned to the managerial chain of command, OCDA HR, County HR/EEO, or the Professional Standards Division (PSD) supervising investigator. Finally, the OCPD indicated that they follow the procedures used by the Orange County Fraud Hotline, as well as those procedures set forth in the Equal Employment and Anti-Harassment Policy when handling anonymous complaints.

Steps to Ensure a Complainant is Protected from Retaliation

The five agencies take varying steps to ensure that a complainant is protected from retaliation.

Both the OCPD and Probation provide a verbal advisement to employees who are the subject of a complaint informing them that retaliation is prohibited. Additionally, the OCPD alerts complainants that they are protected from retaliation and encourages them to report retaliation should it occur.

The OCDA requires supervisors to take reasonable steps to accommodate requests for assignment or schedule changes made by an employee who may be the target of retaliation. According to the SSA, they closely monitor complaints throughout the investigation process and investigate if an individual perceives retaliation or adverse treatment because of their complaint.

The OCSD also responded by indicating that it had prohibited retaliation in numerous department policies.

Specific Policies to Safeguard Complainants

The OCPD, OCDA, SSA, and Probation indicated that they utilized county-wide policies such as the Equal Employment and Anti-Harassment and Abusive Conduct Prevention policies to safeguard individuals from facing negative consequences from coming forward.

The OCSD and OCDA also provided the OIR with copies of department specific policies meant to safeguard individuals from retaliation. The provided policies included the Bureau of Investigation (BOI) Anti-Retaliation Policy, and the OCSD Prohibition on Abusive Conduct and Prohibition on Harassment and Discrimination policies.

Methodology

The OIR began its review by sending a request for information to the five agencies within its oversight authority: the OCPD, OCDA, OCSD, SSA, and Probation. The OIR's letter explained that, as a result of Supervisor Sarmiento's request, the OIR was seeking information regarding each agency's policies and procedures related to the filing of employee and citizen complaints against the agency.

In its request, the OIR solicited copies of any documentation, policies, training material, or other written material related to how complaints are managed within the agency. All five agencies provided responsive documentation. The agencies provided both county-wide and agency-specific policies addressing various types of complaints such as abusive conduct prevention, harassment, discrimination, fraud, and more.

The OIR also asked the five agencies to respond to several questions in order to further clarify their handling of complaints. The first question asked the agencies to describe the processes in place for employees and citizens to file complaints. The next question asked the agencies to explain whether they allow complaints to be filed anonymously, and if so, how the identity of the complainant is protected to ensure that they remain anonymous. If anonymous complaints are accepted, the OIR asked the agencies to describe their procedures for investigating and addressing this type of complaint. The OIR also asked for a description of what steps, if any, the agencies take to ensure that a complainant is protected from retaliation. Finally, the OIR asked if the agencies have any specific policies in place to safeguard individuals in the complaint process from facing any negative consequences for coming forward.

This report summarizes the answers and policies received from each of the five agencies and makes recommendations to enhance the complaint process.

Countywide

Policies and Procedures for Filing Complaints

“What processes are in place for employees and citizens to file complaints with your department?”

The County has comprehensive policies in place for the public to make complaints about different departments and agencies. The policies indicate how certain types of complaints are to be received, documented, and handled. Members of the public have a variety of options to make complaints, including in writing, through a telephone hotline, web form, or by verbal complaint.

Abusive Conduct Prevention Policy

The County’s Abusive Conduct Prevention Policy is applicable to all County Departments and their employees, interns, and volunteers.¹ The policy encourages any individual subject to this County Policy, whether as a victim or observer, to report the abusive conduct to their supervisor, manager, or human resources personnel. The policy also strongly encourages an employee alleging abusive conduct by their supervisor or manager to directly report the concern to their human resources representative. The policy goes on to state that supervisors and managers are responsible for promptly responding to and reporting an allegation to their Agency/Department human resources team. Finally, the abusive conduct policy makes clear that retaliation against an individual for reporting, or participating in an investigation for, abusive conduct is prohibited.

Equal Employment and Anti-Harassment Policy.

The County also has an EEO and Anti-Harassment policy. This policy protects against discrimination, harassment, and retaliation, and applies to all terms and conditions related to employment, recruiting, hiring, training, placement, promotion, disciplinary action, layoff, recall, transfer, leaves of absence, and compensation.²

The County’s EEO policy provides several mechanisms for complainants to report violations. The policy encourages anyone who experiences or witnesses behavior that they believe violates the EEO policy to report the alleged violation to their supervisor or manager, any Human Resources team member, the EEO Officer or their designee. According to the policy, a complaint can be made via email to the general EEO Access

¹ County Policy: Abusive Conduct Prevention Policy No. 0700-17, 12/19/23

² County Policy: Equal Employment and Anti-Harassment P&P Policy No. 0700-1, 12/19/23

office email, or by phone to the EEO Compliance Line. If the complaint is made through the EEO Compliance line, the complaint may be made anonymously.

Americans with Disabilities Act Policy

The County maintains an Americans with Disabilities Act (ADA) policy.³ The ADA policy provides that the County will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

The policy encourages complainants to direct complaints to a department's designated ADA Coordinator. According to the policy, complaints or grievances may also be submitted to the County ADA Title II Manager.

The County also maintains a "Grievance Policy and Procedure Under the Americans with Disabilities Act."⁴ The purpose of this policy is "to standardize the procedures for receiving and addressing complaints." The policy states that the grievance procedure "may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of programs, services, activities, or benefits by the County."

According to the policy, "[t]he complaint should be in writing and contain information about the alleged discrimination." Alternatively, the policy provides that complainants can use the ADA Title II Grievance and Complaint Form, which is located on the County's risk management website.⁵ When the complaint is received, the Department ADA Coordinator or authorized designee will respond, explain the position of the County, and offer options for substantive resolution of the complaint.

Orange County Fraud Hotline

The County of Orange maintains the Orange County Fraud Hotline. The Hotline provides a confidential reporting and investigative avenue regarding possible wrongdoing related to waste, fraud, violations of County policy or misuse of County resources by County vendors and contractors or County employees. The Hotline is staffed with live agents twenty-four hours a day, seven days a week, by a third-party vendor. Hotline complaints may also be made online through the OC Fraud Hotline website.⁶

When a complainant calls the Hotline, the call taker documents the complaint or report and then forwards it to the County. At the direction of the County Counsel, a dedicated

³ County Policy: County Policy for Compliance with Title II of the Americans with Disabilities Act 1300-2, 8/22/2023

⁴ County Policy: Grievance Policy and Procedure Under the Americans with Disabilities Act 1300-1, 8/22/2023

⁵ <https://risk.ocgov.com/programs/ada>

⁶ <https://www.ocgov.com/how-do-i/report/fraud-waste-abuse>

Fraud Hotline team organizes, supervises, and conducts investigations of the complaints made through the Hotline.

Anonymous Complaints

“Does your agency allow complaints to be filed anonymously? If so, how is the identity of the complainant protected to ensure they remain anonymous?”

Whether made telephonically or online, all Fraud Hotline complaints give the filing party the option to remain completely anonymous.

The County of Orange also maintains an EEO Compliance Line which allows victims and witnesses to make complaints anonymously.

“How does your agency handle anonymous complaints? What is the procedure for investigating and addressing such complaints?”

When a Fraud Hotline Complaint is made telephonically or online, upon its completion the filing party is provided a password and a ‘callback’ date, so that the filing party may provide subsequently discovered information relevant to the Complaint. The system also allows the Fraud Hotline Team to leave an outgoing written message to the filing party requesting further information, while preserving the filing party’s right to anonymity.

Additionally, all County agencies adhere to the Orange County Equal Employment and Anti-Harassment Policy and Procedure, which provides that anonymous complaints will be investigated, and the method of investigation will depend on the details provided in the complaint.

Protection Against Retaliation

“For complaints that are not anonymous, what steps does your agency take to ensure that the complainant, whether an employee or citizen, is protected from retaliation?”

Are there specific policies in place to safeguard the individuals involved in the complaint process from facing any negative consequences for coming forward?”

The Orange County Fraud Hotline can also be used by members of the public and County employees who wish to report retaliation. The Fraud Hotline website also conspicuously displays an advisement that whistleblowers may be protected under the California Whistleblower Protection Act (Labor Code 1102.5 and 1106).

Additionally, all County agencies adhere to the Orange County Equal Employment and Anti-Harassment Policy and Procedure, which prohibits retaliation against anyone who reports,

assists in reporting, or expresses an intent to report violations of this policy, or who participates in the investigation of, or in, proceedings related to any claim under this policy.

Finally, the County's Abusive Conduct Prevention Policy similarly prohibits retaliation against an individual for reporting abusive conduct or participating in a related investigation.⁷

Orange County Public Defender

Policies and Procedures for Filing Complaints

“What processes are in place for employees and citizens to file complaints with your department?”

In response to this review, the OCPD identified several processes for handling employee and citizen complaints that are lodged with the department.

Orange County Fraud Hotline

The OCPD indicated that “[t]he Orange County Fraud Hotline may be used by County employees, the general public, or vendors for reporting suspected waste, fraud, violations of County policy or misuse of County resources by vendors, contractors or County employees.” According to the OCPD, they have posters “affixed to bulletin boards in all main breakrooms at each facility for the Offices of the Public Defender.” The posters provide the phone number for reporting suspected violations.

Equal Employment and Anti-Harassment Policy

As it relates to complaints involving the County's EEO policy, the OCPD indicated that complaints “may be submitted directly to the County of Orange HRS EEO Access Office or to the Department human resources team.” Information on how to submit a complaint to the EEO Access Office Complaint Hotline is also affixed to the bulletin boards in all OCPD main breakrooms at each facility.

Americans with Disabilities Act Policy

As it relates to the ADA, the OCPD indicated that the “Public Defender adheres to County of Orange ADA policy when receiving, handling and documenting ADA complaints. Complaints may be submitted using the Americans with Disabilities Act Title II Grievance and Complaint Form.”

⁷ County Policy: Abusive Conduct Prevention Policy No. 0700-17, 12/19/23

The OCPD also stated that it placed an ADA notice at all of the department's public facing counters. According to the OCPD, "[t]he Public Defender's ADA Coordinator and/or CEO Risk Management in conjunction with the Department work to resolve any reported complaints or issues. Once the review is complete, the complainant would receive a letter notifying them of the outcome."

Recruitment Selection Complaints

A member of the public who is a candidate for employment with the OCPD may file a complaint regarding the recruitment process. The OCPD follows the County recruitment appeals process. According to the OCPD, if a candidate is dissatisfied with the recruitment, and their dissatisfaction is not remedied by an explanation of the process, they may submit a Recruitment Complaint Form to County of Orange – Employee & Labor Relations. Following a thorough review of the complaint, the complainant is sent a letter notifying them of the outcome.

Complaints Regarding Attorney Representation by Clients

Clients of the OCPD may file a complaint about their attorney representation in several ways. Most commonly, complaints regarding representation are made by phone, email, or in-person to the attorney's supervisor. With these types of complaints, the supervisor can access the electronic file and immediately address the complaint.

Clients of the OCPD who are pending trial, and unhappy with their representation, may also request that the Superior Court appoint different counsel. OCPD policy requires an attorney manager to be present when the court hears this type of request.

General Complaints

The OCPD also accepts general complaints from third parties, whether the complaint is from a member of the public or a client, through its general email address. These complaints are reviewed every day by either a member of the executive team or the OCPD's executive assistant. Additionally, the County can forward complaints it receives to the OCPD through its customer relationship management software. All correspondence forwarded to the OCPD through this system is reviewed by the Executive Secretary and handled by the executive manager.

Aside from general contact information, including the general email address, the OCPD's website does not have any information indicating how a member of the public can go about filing a complaint.

Recommendation

Create an easy to find page on the organization’s website that provides instructions and guidance for members of the public on the various mechanisms available to file a complaint.

Employee Complaints

The OCPD does have a process to address complaints regarding workstation ergonomics. When an employee notifies the OCPD of a complaint regarding their workstation, “the Public Defender Safety Manager will meet with the employee and conduct an ergonomic evaluation of the employee’s workstation.” The Safety Manager will then provide a set of recommendations to address concerns, which are documented in a report. Specific equipment may be ordered to accompany the recommendations.

If an employee has a complaint related to facilities, they can send their complaint to a group email address which includes the OCPD’s Facilities and Safety Manager and department leadership.

Anonymous Complaints

“Does your agency allow complaints to be filed anonymously? If so, how is the identity of the complainant protected to ensure they remain anonymous?”

The OCPD allows complaints to be filed anonymously. However, the OCPD does not have a department specific policy regarding the filing of anonymous complaints. In the absence of a specific County policy covering a complaint, the OCPD takes, and acts on, anonymous complaints “to the extent anonymity does not legally or practically prevent the complaint from being acted on.”

How does your agency handle anonymous complaints? What is the procedure for investigating and addressing such complaints?”

The OCPD indicated that when anonymous complaints fall within the purview of a County policy, the OCPD follows the procedure set forth in the County policy. For example, the OCPD indicated that complaints implicating the County’s EEO Policy can be handled anonymously to the extent allowed by law.

According to the OCPD, if a “complainant wished to remain confidential, the level of confidentiality afforded [them] will depend on the nature of the complaint. For example, EEO complaints are always confidential and the identity of the complainant is disclosed only on a need-to-know basis as required by law.” However, the OCPD also recognized that some complaints specific to the OCPD cannot, by their nature, be handled anonymously. “For example, client complaints regarding legal representation necessarily involve a review

of the client’s case file to determine whether the attorney is meeting their professional obligations. Similarly, a complaint from a judicial officer or opposing counsel regarding the professionalism of an attorney necessarily involves a review of the role of the complaining party in the process.”

Protection Against Retaliation

“For complaints that are not anonymous, what steps does your agency take to ensure that the complainant, whether an employee or citizen, is protected from retaliation?”

According to the OCPD, employees who are the subject of a complaint are advised during the investigation that any sort of retaliation is prohibited and will not be tolerated. Similarly, complainants are advised that they are protected from retaliation and encouraged to report retaliation should it occur.

Are there specific policies in place to safeguard the individuals involved in the complaint process from facing any negative consequences for coming forward?”

There is no specific OCPD policy addressing retaliation involving the public. However, as it relates to department employees who submit complaints related to EEO, workplace violence, or fraud, the OCPD recognized that they are protected from retaliation by County and/or Department policy, and in some cases by statute.

Orange County District Attorney

Policies and Procedures for Filing Complaints

“What processes are in place for employees and citizens to file complaints with your department?”

Orange County Fraud Hotline

In response to this review, the OCDA also indicated that “the Orange County Fraud Hotline may also be used for County employees, the general public, and vendors who wish to report suspected waste, fraud, violations of County policy or misuse of County resources by County vendors, and contractors or County employees.”

The OCDA also provided a copy of the County’s Procurement Procedures Manual which discusses intentional or negligent misuse of County policies and procedures related to the County’s procurement card program. The manual specifically directs persons with knowledge of intentional or negligent misuse by a cardholder to contact the Hotline.

Equal Employment and Anti-Harassment Policy

As it relates to complaints involving the County's EEO policy, the OCDA indicated that employees have several options to file a complaint. Employees can report a complaint directly to their supervisor, through their managerial chain of command, or with OCDA Human Resources. Employees can also file a complaint directly with County HR or the EEO Access Office.

General Complaints

The OCDA accepts citizen complaints involving the activities of the Office of the District Attorney. Complaints can be informal and may be resolved by speaking directly with a Deputy District Attorney.⁸ The complainant can also lodge a formal complaint by completing and submitting a complaint form available at the reception desk of each branch. These complaints will be forwarded to the appropriate Assistant District Attorney for consideration and response.

The OCDA also contains the BOI. The BOI is the OCDA's law enforcement division and is made up of over 200 sworn and non-sworn investigators and support team members.

The BOI has a separate policy manual that contains a policy that specifically addresses personnel complaints.⁹ The policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of members of the BOI. Specifically, the policy provides that personnel complaints regarding a member of the BOI, generated either internally or by the public, may be made in any form: in writing, complaint form, phone, email, or in person.¹⁰

The BOI also has a citizen complaint form that can be obtained at reception as well as from any member of the BOI.

While citizen complaint forms are readily available at the OCDA reception desk of each branch, the OCDA does not make them available on their website. Requiring members of the public to visit in person to make a complaint may act as a barrier for potential complainants with limited resources or disabilities. The OCDA should make their complaint forms more accessible.

⁸ OCDA Office Procedures & Guidelines Manual – Relations with Outside Agencies/Individuals (A) Citizen Complaints

⁹ OCDA Policy – Bureau of Investigation Policy Manual – Policy 1005 Personnel Complaints, 10/15/2024

¹⁰ OCDA Policy – Bureau of Investigation Policy Manual – Policy 1005 Personnel Complaints, 10/15/2024

Recommendation

Create an easy to find page on the organization’s website that provides instructions and guidance for members of the public on the various mechanisms available to file a complaint.

Anonymous Complaints

“Does your agency allow complaints to be filed anonymously? If so, how is the identity of the complainant protected to ensure they remain anonymous?”

According to the OCDA, they do accept anonymous complaints. However, they indicated that their ability to investigate anonymous complaints, “depends upon the sufficiency of the information provided and [their] ability to further investigate the complaint given the anonymity with which it has been provided.” The OCDA indicated further that if a complaint is sufficiently detailed, the investigation may be able to proceed in the same manner as any other complaint.

The OCDA also accepts complaints submitted through the EEO Compliance Line and the County Fraud Hotline. Both call services provide the option for a caller to remain anonymous.

The BOI policy manual similarly addresses anonymous personnel complaints by stating that “[a]nonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.”¹¹ Another BOI policy recognizes that in certain circumstances the filing of an anonymous complaint may be necessary for complaints of retaliation. In that situation, “[a]ll reasonable efforts shall be made to protect the reporting employee’s identity.”¹²

“How does your agency handle anonymous complaints? What is the procedure for investigating and addressing such complaints?”

In response to this review, the OCDA indicated that when an anonymous complaint is received regarding employees outside of the BOI, it will be investigated and assigned, as appropriate, to their managerial chain of command, OCDA HR, or County HR/EEO. If the complaint concerns BOI personnel, it is assigned to the PSD supervising investigator. According to the OCDA, “[t]he supervising investigator will conduct a thorough investigation while ensuring all rights afforded to both the complainant and accused are protected.”

¹¹ OCDA Policy – Bureau of Investigation Policy Manual – Policy 1005 Personnel Complaints, 10/15/2024

¹² BOI Policy 1016 –Anti-Retaliation, 10/28/2024

Protection Against Retaliation

“For complaints that are not anonymous, what steps does your agency take to ensure that the complainant, whether an employee or citizen, is protected from retaliation?”

According to the OCDA, supervisors are required to take reasonable steps to accommodate requests for assignment or schedule changes made by an employee who may be the target of retaliation.

“Are there specific policies in place to safeguard the individuals involved in the complaint process from facing any negative consequences for coming forward?”

OCDA responded to this request by indicating that they adhere to “all County policies that prohibit retaliation (e.g., Abusive Conduct Prevention Policy; Equal Employment and Anti-Harassment Policy; County of Orange Code of Conduct).” The OCDA relies on the County’s policies to safeguard individuals who are involved in the complaint process. According to the OCDA, OCDA HR discusses with complainants the importance of reporting any concerns of retaliation related to a complaint of unlawful harassment or discrimination.

The OCDA also indicated that the BOI has an Anti-Retaliation Policy. This policy prohibits retaliation against employees who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement, or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of employees.¹³ The policy provides that, “[n]o member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory, or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.”

After receiving a complaint of retaliation, supervisors are required to monitor the work environment and follow up with the complainant to ensure that the complainant is not subjected to further retaliation.

Orange County Sheriff’s Department

Policies and Procedures for Filing Complaints

“What processes are in place for employees and citizens to file complaints with your department?”

¹³ BOI Policy 1016 – Anti-Retaliation, 10/28/2024

In response to this review, the OCSD identified three primary OCSD policies governing the filing of complaints. Policy 1020 addresses OCSD's personnel complaint procedure, Policy 328 concerns the OCSD's prohibition on harassment and discrimination, and Policy 330 outlines the OCSD's prohibition on abusive conduct.

The OCSD gives members of the public various options to convey a variety of complaints. The public can choose a method that is most convenient to them to make the complaint, in person, by mail, online, or by telephone through the OCSD or County Fraud Hotline. The OCSD Complaint Form is also available online in 26 different languages, allowing the public to submit complaints without needing to visit in person. The OCSD's policies include how these complaints are received, handled, and documented.

Orange County Fraud Hotline

The OCSD has a process to investigate complaints received through the County Fraud Hotline. As part of this review, the OCSD provided the OIR with a copy of its internal Fraud Hotline Form. The form is to notify the County that the complaint from the Fraud Hotline was received, investigated, and a determination was made.

A complaint submitted through the County Fraud Hotline is sent directly to the Undersheriff from the Office of County Counsel. The Undersheriff then sends the complaint to the appropriate Executive. The Executive then assigns the matter to a Division Commander to investigate and adjudicate. The Division Commander completes the Fraud Hotline Form and uploads it to the Commendation and Complaint Reporting System for approval by the Executive Command and to close out the investigation. The Executive Command then sends the approved form to the County and provides the Division Commander with a signed copy.

Personnel Complaint Procedure (Policy 1020)

Under the Personnel Complaint Procedure, complaints made to non-supervisory employees are required to be referred to a manager or supervisor, even if the complaint appears to be minor in nature or easily and informally handled. Managers and supervisors are required to document all complaints, apart from inmate grievances which are handled under a different policy. The completed report must then be assigned to the appropriate Commander via the chain of command for appropriate action.

The complainant is provided with a copy of the complaint. Once an Initial Report documenting a complaint has been created by a supervisor, the complainant also receives a "Complainant Notification" form by mail or email. A supervisor or assigned member of the Internal Affairs Bureau then completes an administrative investigation of the

complaint. Once the investigation is completed the findings are reviewed by their respective managers, then ultimately finalized by the Division Commander.

The OCSD is currently considering updating the Personnel Complaint Procedure policy.

Prohibition on Harassment and Discrimination (Policy 328)

The OCSD's policy prohibiting harassment and discrimination applies to employees, applicants, independent contractors, interns, and volunteers. According to the OCSD, employees who believe they are being unlawfully harassed or discriminated against may report the issue directly to their supervisor, any other supervisor or manager, HR/Professional Standards Division (PSD), the County's Equal Employment Opportunity Access Office, or the County Compliance Line, which operates 24/7 and allows anonymous reporting.

A person making a report does not need supervisor or manager approval and there is no chain of command when reporting harassment or discrimination. The OCSD's policy prohibiting harassment and discrimination is posted in common areas, reissued annually with employees' performance evaluations, distributed during new employee orientations, incorporated in the Policy manual, and is available for copy or review at the PSD.

Bias Free Policing (Policy 402)

The OCSD also maintains a Bias Free Policing policy (Policy 402) with the intent to provide law enforcement services to the community free of discriminatory intent and effect. Complaints of bias-based policing or racial or identity profiling can be made using the OCSD's Personnel Complaint Procedure.

Prohibition on Abusive Conduct (Policy 330)

The OCSD's Prohibition on Abusive Conduct policy (Policy 330) prohibits any department employee from engaging in abusive conduct towards other employees, interns, volunteers, applicants, clients, independent contractors, or members of the public. According to the OCSD, anyone who experiences or witnesses abusive conduct can make a report to their supervisor or manager, any other supervisor or manager, or any PSD or Human Resources team member. As with reporting discrimination and harassment, there is no chain of command for reporting abusive conduct, and an affected person does not need supervisor or manager approval.

Anonymous Complaints

“Does your agency allow complaints to be filed anonymously? If so, how is the identity of the complainant protected to ensure they remain anonymous?”

In terms of anonymous complaints, the OCSD indicated that members of the public can submit Complaint Forms and Public Comment Notice Forms anonymously via U.S. Mail. The OCSD policy related to the prohibition on harassment and discrimination also allows employees to file complaints anonymously. Individuals can also submit concerns through the County Compliance Line, which ensures confidentiality and protection for complainants.

In order to protect the identity of the complainant, the OCSD indicated that the complainant can omit any identifying information from their written complaint to maintain anonymity. Additionally, “[t]o the extent possible, the Department will endeavor to keep reporting of the complainant's concerns confidential; however, complete confidentiality cannot be guaranteed if it interferes with the Department's ability to fulfill its obligations under this Policy or any applicable law or order.”¹⁴

According to the OCSD, calls made to report concerns are not recorded, retained, or traced. Additionally, gender information is not referenced in anonymous reports. To track anonymous reports while maintaining confidentiality, each report is assigned a unique report number, allowing the ability to monitor the progress of the complaint without compromising the complainant's identity.

“How does your agency handle anonymous complaints? What is the procedure for investigating and addressing such complaints?”

Anonymous complaints are investigated in accordance with the OCSD Personnel Complaint Procedure policy, in the same manner as non-anonymous complaints. The OCSD harassment and discrimination policy also states that “[e]very complaint of harassment and/or discrimination reported to the Department shall be investigated in a fair, timely, thorough, impartial, and confidential manner by qualified personnel.”¹⁵

Protection Against Retaliation

“For complaints that are not anonymous, what steps does your agency take to ensure that the complainant, whether an employee or citizen, is protected from retaliation?”

Are there specific policies in place to safeguard the individuals involved in the complaint process from facing any negative consequences for coming forward?”

The OCSD does not have a specific policy addressing retaliation involving members of the public who are not currently incarcerated. However, they do have several policies that discuss retaliation related to their employees. Policy 330 (Prohibition on Abusive Conduct)

¹⁴ OCSD Policy 328 – Prohibition on Harassment and Discrimination, 10/10/2024

¹⁵ OCSD Policy 328 – Prohibition on Harassment and Discrimination, 10/10/2024

specifically prohibits retaliation against employees for reporting abusive conduct. Policy 300 (Use of Force) states that department members shall not be retaliated against for reporting a suspected violation of a law or regulation of another member to a supervisor or other person in the department who has the authority to investigate the violation.

Policy 328 (Prohibition on Harassment and Discrimination) also has a section that prohibits retaliation and emphasizes the importance of maintaining an environment where department employees feel comfortable in coming forward. According to this policy, “anyone making a good-faith allegation of discrimination or harassment is assured that their report will be handled sensitively, with no risk of retaliation from any source, regardless of the investigation's outcome.”

The OCSD also has specific policies related to incarcerated persons and retaliation. As it relates to incarcerated persons filing grievances, the OCSD’s Inmate Grievance Procedure specifically prohibits staff from harassing, disciplining, punishing, or otherwise retaliating against an incarcerated person who uses or participates in the grievance process.¹⁶

Finally, the OCSD’s Prison Rape Elimination Act (PREA) policy requires the department’s PREA coordinator to interview staff and inmates to review their perception of retaliation for making an allegation, or cooperating with an investigation, of sexual abuse. According to the policy, “[i]f retaliation is detected, immediate corrective action will be taken and documented. Corrective action may include (but is not limited to) any of the following: facility transfer, housing unit change, removal of alleged staff or inmate abuser from contact with the victim, and /or emotional support services.”¹⁷

Orange County Social Services Agency

Policies and Procedures for Filing Complaints

“What processes are in place for employees and citizens to file complaints with your department?”

Equal Employment and Anti-Harassment Policy

In response to a request from the OIR, the SSA responded by providing an electronic copy of its administrative policies and procedures related to the County’s Equal Employment Opportunity and Anti-Harassment Policy and Procedures. The policy provided a link to the County’s EEO website and Anti-Harassment Policy. Additionally, the policy contained a link to the County’s online EEO Complaint Form and instructions for filing discrimination

¹⁶ CCOM 1600.5 Inmate Grievance Procedure

¹⁷ CCOM 2900.2 PREA Coordinator and PREA Compliance Manager

complaints. Information on how to file a complaint with the SSA, as well as state and federal agencies, is also listed on the website.

According to SSA policy, members of the public can also file a complaint utilizing the County's Access Orange County (AccessOC) webmail.¹⁸ AccessOC allows complaints to go directly to designated SSA staff. Dedicated SSA staff are required to respond within two business days. For situations where a member of the public failed to specify the subject of their complaint, the designated SSA staff "shall acknowledge the email and forward the email to an SSA subject matter expert, or to the appropriate department/agency, on the same day, if possible."

The Children and Family Services (CFS) Operations Manual contains a policy related to Client Rights.¹⁹ Within this policy is a requirement that CFS will offer a complaint procedure, and provide a complaint form, to clients who claim discrimination. According to the policy, complaint form will be provided in the client's primary language whenever possible. The policy further directs that CFS staff will also "[a]ssist the client with completion of the form, if requested, or if the complaint is received by telephone." If CFS staff take the complaint by telephone, the policy provides that a copy of the completed discrimination complaint form will be mailed to the client for their records.

Public Benefits Programs

In response to this review, the SSA also provided the OIR with a State of California "Your Rights Under California Public Benefits Programs" pamphlet. The pamphlet indicates that for all programs administered by the county, that a person may file a complaint by contacting the County's Civil Rights Coordinator.

In addition to the pamphlet, the SSA provided the OIR with a fillable discrimination/retaliation complaint form that can be mailed or emailed to the Civil Rights Coordinator. This form covers discrimination and retaliation for a number of different types of aid, including CalWorks, Medi-Cal, Children and Family Services, and Adult Protective Services. This form can be downloaded from the SSA Civil Rights webpage. The webpage also indicates that complainants can file a civil rights complaint "through email, mail, in-person or telephone."

Abuse Complaints

The SSA also provided a copy of their Operations Manual related to Recipient Activity Complaints.²⁰ The purpose of the procedure "is to provide guidelines for documenting,

¹⁸ Policy-E2 Access Orange County Electronic Mail, 12/9/2019

¹⁹ CFS Operations Manual Number B-0105 – Client Rights 7/7/2010

²⁰ FSS Operations Manual Number B-VIII.30 – Recipient Activity Complaints 06/2022

tracking and recording all complaints received regarding recipients of the public assistance programs.” The procedure describes the process and responsibility for persons involved in taking complaints related to fraud, misuse of funds, neglect and abuse. The procedure also provides information directing the recipient of a call related to abuse to take down all information contained in a specific form, and then contact either the Child Abuse Registry or Elder Abuse Registry. The complaint form is also forwarded to a first level supervisor.

In addition to the above, CFS also has a policy related to child abuse investigations at the Orangewood Children and Family Center (OCFC).²¹ The policy indicates that law enforcement and CFS will be notified of child abuse reports immediately or as soon as practicably possible. According to the policy, allegations of child abuse and/or neglect at OCFC will generally be investigated by the OCSD. The policy also sets out the requirements for other notifications including a child’s parents, legal guardian, and attorney.

Americans with Disabilities Act

The SSA also provided the OIR with a Form entitled “ADA Title II, Public Access to Programs and Services Complaint Form.” The form indicates that it is to be used to file a complaint related to barriers that inhibit a designated person from being able to access a program or services. The complaint can be submitted in multiple ways to either the County ADA II Coordinator or SSA ADA II Coordinator including by telephone, mail, email, or in person.

Foster Care Placement

The SSA has an in-house grievance process to review complaints from parents, children, and out-of-home care providers, concerning the placement or removal of a child from a foster home. The Placement Grievance Review policy lays out guidelines for responding to complaints from parents, children, and care providers regarding the placement or removal of a child from a foster home.²² According to the policy, when a child is removed from their parents, the parents are advised of their right to a grievance review and are provided with a Placement Grievance Review Procedure Guide. The policy further indicates that a Grievance Review Coordinator from the SSA’s QST receives and coordinates grievance requests.

Child Abuse Central Index

The SSA also has an in-house grievance process to address complaints filed by individuals who believe they have been incorrectly listed in the California Child Abuse Central Index.²³

²¹ CFS Operations Manual Number A-0103 - Abuse Investigations—Orangewood Children and Family Center Employee Investigations, 1/31/2024

²² CFS Operations Manual Number K-0206, Placement Grievance Review, 8/20/2019

²³ CFS Operations Manual Number A-0301, Child Abuse Central Index Grievance Reviews, 8/23/2022

The Child Abuse Central Index Grievance Reviews policy provides guidelines for the handling of grievances typically challenging the accuracy or fairness of a listing in the index. According to SSA, an individual may use this process to request a review or removal of their name from the index. The grievance process allows individuals to present evidence or arguments that the substantiated finding of child abuse was incorrect or unjust.

Quality Support Team

The SSA also recognized that there are some situations where a complaint does not fall within the scope of a protected class (i.e., not related to civil rights), or other formal grievance process. In these situations, clients and members of the public can contact the QST Officer of the Day by phone. According to the SSA, the Officer of the Day listens to the complaint and works with the appropriate person or department to ensure a successful resolution.

Locating information on how to contact the QST Officer of the Day is difficult. Currently, information for filing a complaint, outside the scope of a protected class or other formal grievance process, is located under the web page for civil rights complaints. To ensure complainants can find information for complaints not related to civil rights, the SSA should create a separate web page that easily provides contact information for the QST Officer of the Day.

Recommendation

Create a designated web page on the SSA's website for complaints made to the QST that do not fall within the scope of a protected class or other formal grievance process.

Anonymous Complaints

“Does your agency allow complaints to be filed anonymously? If so, how is the identity of the complainant protected to ensure they remain anonymous?”

The SSA did not provide the OIR with a policy that specifically addresses the filing of anonymous complaints. However, the SSA did indicate that many complaints can be filed anonymously, including but not limited to, reports made to the Child and Adult Abuse Hotline, the OC Fraud Hotline, the QST, as well as calls and emails to the Director. Additionally, members of the public can send anonymous complaints directly to County staff utilizing the County's Access Orange County (AccessOC) webmail. The OIR reviewed the Access Orange County website and observed that it has a tab that allows members of the public to choose to submit complaints anonymously.

The SSA also provided a copy of their “Recipient Activity Complaint Form.” The form is used to document, track and record all complaints received regarding recipients of public

assistance programs. The form has a checkbox that allows the call taker to indicate that the complaint was made anonymously. Additionally, the SSA indicated that complaints filed with the QST do not require names and phone numbers.

“How does your agency handle anonymous complaints? What is the procedure for investigating and addressing such complaints?”

Once an anonymous complaint is received, the SSA acknowledges the submission if contact information is provided. Additionally, the SSA stated that if the complaint provides sufficient information, an investigation is conducted, focusing on the issue raised. According to the SSA, anonymous complaints are typically escalated through the chain of command and are prioritized for review by subject matter experts and the investigation process adheres to the same protocols as non-anonymous complaints. In cases involving serious issues, additional measures, such as notifying appropriate authorities or implementing corrective actions, may be taken.

Recommendation

Create a policy that clearly outlines and documents the organization’s procedures and guidance on how to handle an anonymous complaint.

Protection Against Retaliation

“For complaints that are not anonymous, what steps does your agency take to ensure that the complainant, whether an employee or citizen, is protected from retaliation?”

In response to this question, the SSA indicated that it closely monitors complaints throughout an investigation process and ensures confidentiality to the extent possible. Additionally, if an individual perceives retaliation or adverse treatment as a result of their complaint, the SSA stated it will conduct a thorough investigation.

Are there specific policies in place to safeguard the individuals involved in the complaint process from facing any negative consequences for coming forward?”

The SSA relies on countywide policies to ensure that complainants are protected from retaliation. For example, the SSA identified the County’s Equal Employment and Anti-Harassment policy as a policy in place that protects both employees and citizens who come forward with complaints.

Orange County Probation Department

Policies and Procedures for Filing Complaints

“What processes are in place for employees and citizens to file complaints with your department?”

Personnel Complaints

Probation has a procedure in its Procedure Manual specifically focused on complaints against personnel.²⁴ The policy only addresses the handling of citizen complaints. According to the policy, all complaints of employee misconduct are promptly brought to the attention of the Chief Probation Officer and forwarded to the Professional Standards Division (PSD) for investigation.

Probation’s policy defines a personnel complaint as an allegation of misconduct or improper job performance, or dissatisfaction with Probation’s service, procedure or practice. The policy indicates that complaints can be made in person, by telephone, via email, or in written form.

Probation’s procedure specifically outlines how to handle complaints made in person and received by phone. According to the policy, a Complaints Against Personnel (CAP) form should be given to any citizen who requests one. CAP Forms are also available in reception areas and on Probation’s website. The policy states that Probation will accept all complaints regardless of whether the complainant completes the CAP Form. After a complaint is received, a complaint acknowledgement letter will be prepared and sent to the complainant acknowledging receipt of the complaint.

In response to the above question, Probation also identified that complaints can be submitted via the County’s U-TIP and OC Fraud Hotlines. The U-Tip Hotline allows county employees to report hazards, while the OC Fraud Hotline allows the general public and County employees to report suspected waste, fraud, violations of County policy, or misuse of County resources.

Probation’s website has a clear link to the “Complaints Against Personnel” form in five different languages. However, the website does not have text that directs the public on how to file other types of complaints such as those regarding the general practices of the Probation Department. Information related to making a general complaint can only be found by opening the CAP form and scrolling to the second page. Additionally, while the contact us page of the Probation website contains a form that allows the public to send a

²⁴ Procedure Manual Item 1-3-404, Complaints Against Personnel

private message to Probation, there is no language that indicates that this form should be used for complaints about the department.

Recommendation

Create an easy to find page on the organization's website that provides instructions and guidance for members of the public on the various mechanisms available to file a complaint.

Anonymous Complaints

“Does your agency allow complaints to be filed anonymously? If so, how is the identity of the complainant protected to ensure they remain anonymous?”

Probation does not have a specific policy regarding anonymous complaints. However, in response to this review, Probation did indicate that complaints may be filed anonymously, and that they keep the identity of a complainant confidential to the extent possible.

However, Government Code § 3303(g) entitles a peace officer to copies of reports made by investigators or other persons. Therefore, according to Probation, peace officer personnel investigations are an example of a situation where anonymity may not be guaranteed.

Probation also identified the U-Tip and OC Fraud Hotlines as mechanisms for submitting complaints. Both hotlines have systems in place to allow individuals to file complaints anonymously.

“How does your agency handle anonymous complaints? What is the procedure for investigating and addressing such complaints?”

According to Probation, anonymous complaints are handled under the same procedures as complaints against personnel.

Protection Against Retaliation

“For complaints that are not anonymous, what steps does your agency take to ensure that the complainant, whether an employee or citizen, is protected from retaliation?”

In response to this question, Probation indicated that they read a verbal advisement to the subject of an investigation to ensure that a complainant is protected from retaliation. The advisement puts the employee on notice that it is illegal and inappropriate to retaliate against or intimidate any person who has participated in complaining or providing information regarding any allegations. The employee is also instructed that they cannot, for purposes of retaliation, contact any person who provided information regarding their

conduct. Finally, the employee is also advised that a violation of the warning will result in separate additional disciplinary action up to and including discharge.

“Are there specific policies in place to safeguard the individuals involved in the complaint process from facing any negative consequences for coming forward?”

Probation identified the County’s Abusive Conduct Prevention Policy as a policy that is in place to protect employees against retaliation for filing a complaint.

Conclusion

A thorough review of the information provided by all five agencies indicates that complainants have numerous avenues for lodging a complaint with, or against, each agency or a member of that agency. If a complainant does not wish to file directly with an agency, they can file a complaint utilizing one of several county-wide processes.

All of the agencies also accept anonymous complaints either directly or through one of the county hotlines. Complaints submitted anonymously are, to the extent possible, investigated in the same manner as other traditional confidential investigations.

In response to this review, the SSA provided a written description of the process that they use to handle anonymous complaints. That information should be captured in an agency policy so that all employees can be made aware of how the agency handles such complaints.

All five agencies have either a specific department policy that prohibits retaliation against individuals who make a complaint or prohibit retaliation utilizing existing county policies.

Finally, the OIR had the opportunity to review the webpages of the five agencies to ascertain the ease with which members of the public can learn how to file a complaint. A webpage with clear instructions on how to file a complaint is in the best interest of the public and the agencies to ensure that the public has an opportunity to voice concerns, and the agencies are alerted to potential issues as soon as possible.

Recommendations

Public Defender, District Attorney, and Probation:

1. Create an easy to find page on the organization's website that provides instructions and guidance for members of the public on the various mechanisms available to file a complaint.

Social Services Agency:

2. Create a designated web page on the SSA's website for complaints made to the QST that do not fall within the scope of a protected class or other formal grievance process.
3. Create a policy that clearly outlines and documents the organization's procedures and guidance on how to handle an anonymous complaint.