

Rule 8: Non-communication direction for involved officers in Level 3 complaints

Purpose

This rule establishes explicit authority for the PRC to direct involved police officers, peace officers, and police service employees and contractors in Level 3 complaints to refrain from communicating with any other person with direct or indirect involvement in an incident leading to the complaint about the details of the complaint to preserve the integrity, fairness, and independence of the investigative process.

Legislation

- **S. 1(h) of the Police Conduct and Oversight Regulation (PCOR)**
 - “Person in charge of the investigation” means the chief executive officer, the head of an integrated investigative unit under section 43.3(2)(a) of the Act or the chief of a police service or officer in charge of a police service conducting an investigation under the Act, as the case may be, and includes a person acting under the authority of that person.
- **S. 1(o) of the Police Conduct and Oversight Regulation (PCOR)**
 - “subject officer” means a police officer who is the subject of a Level 1 complaint, Level 2 complaint or **Level 3 complaint**.
- **S. 1(p) of the Police Conduct and Oversight Regulation (PCOR)**
 - “witness officer” means a police officer or a peace officer as defined in the *Peace Officer Act* who is a witness to or has material information in relation to a Level 1 complaint, Level 2 complaint or **Level 3 complaint**.
- **S.(6)(2)(c)(i) of the Police Conduct and Oversight Regulation**
 - The chief executive officer may establish rules governing the complaints procedure, including the management of complaints by the Police Review Commission.
- **S. 6(3)(b) of the Police Conduct and Oversight Regulation**
 - A rule established under subsection (2) is binding on the persons to whom the rule applies.
- **S. 18(2)(g)(ii) of the Police Conduct and Oversight Regulation**
 - “insubordination” means omitting or neglecting, without adequate reason, to carry out a lawful order, directive, rule or policy of the commission, the chief of police or any other person who has the authority to issue or make that order, directive, rule or policy.
- **S. 19(3) of the Police Conduct and Oversight Regulation**
 - A police officer in respect of whom an investigation into a Level 3 complaint is being carried out or a witness officer may voluntarily provide the investigation with an explanatory report.
- **S. 19(4) of the Police Conduct and Oversight Regulation**
 - The person in charge of the investigation may direct a subject officer or witness officer to provide the investigator with an explanatory report and the subject officer or witness officer must provide the report as soon as practicable.
- **S. 20(1) of the Police Conduct and Oversight Regulation**
 - When investigating a Level 3 complaint, the person in charge of the investigation may direct police officers, peace officers and employees and contractors of a police service to attend an interview and answer questions.

Procedure

1. The PRC, including Case Management unit and Code of Conduct investigators, may issue a written direction requiring any involved police officer, peace officer, and police service employee or contractor in an incident leading to a complaint to refrain from communicating with other involved police officers, peace officers, police service employees or contractors, or any civilian witnesses about the details of the complaint without the consent of the PRC.
2. Non-communication directions may be issued:
 - i. By the PRC's Case Management unit as part of the subject officer notification prior to the commencement of the investigation; or
 - ii. by a PRC Code of Conduct investigator in a Direction for Explanatory Report pursuant to section 19 of the PCOR or in a Direction for Interview pursuant to section 20 of the PCOR; or
 - iii. By any other member of the PRC acting under the authority of the CEO or investigator in charge.
3. Persons subject to the direction who are required to work together to perform operational duties may request the consent of the investigator to waive or modify the non-communication direction for the limited purpose of completing those duties.
4. Persons subject to the direction may continue to communicate with their legal representative and their association or union representative about the matter under investigation.
5. The Code of Conduct Investigator may modify or end the non-communication measures based on the following:
 - i. Whether the involved person has submitted their report and notes about the incident;
 - ii. Whether the involved person has provided a statement about the incident;
 - iii. Delay in obtaining a statement from the involved person;
 - iv. Whether other involved persons have submitted their report and notes and/or provided a statement about the incident;
 - v. Whether civilian witnesses with information about the complaint have provided a statement;
 - vi. Any other investigative or operational considerations that are relevant.
6. Failure to comply with the direction by police officers may constitute insubordination as defined under section 18(2)(g)(ii) of the PCOR.