

# CHARLOTTESVILLE POLICE DEPARTMENT

Note: This directive is for internal use only and does not enlarge an officer’s liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by the Charlottesville Police Department and then only in a non-judicial administrative setting.



Type of Directive: GENERAL ORDER	Number: 49-99
<b>INTERNAL INVESTIGATIONS AND CITIZEN COMPLAINTS</b>	Date: December 2, 2019
VLEPSC Number: ADM.18.01, 18.02, 18.03, 18.04, 18.05, 18.05, 18.07, 18.08 and 18.09	Manual Number: 517.01
	Effective Date: Feb. 19, 2021
Authorization: Chief R.M. Brackney	Follow-up Date: Annually

## I. POLICY

The integrity of the Charlottesville Police Department depends on the personal integrity and discipline of all employees, both individually and collectively. The public’s perception of the effectiveness of the Department is to some extent determined by the prompt and concerned response of the Department to allegations of misconduct or improper activity by its employees both on and off duty. Public perception of the fairness and thoroughness of the internal affairs process will impact the confidence the community has in the Department’s ability to investigate its member’s conduct. As such, the Department will work to ensure open and transparent investigations. The Department recognizes that part of the responsibility for ensuring that the Department maintains high standards of service to the community should be a systematic effort to identify and address potential problems with employee misconduct before a citizen feels compelled to complain. Providing a procedure to address employee misconduct identified through internal processes will hopefully encourage professional conduct throughout the organization.

Investigation of complaints against employees of the Department will be conducted with the strictest confidentiality, keeping in mind the rights, concerns, and privacy of all parties involved. All complaints will be investigated in a fair and impartial manner and under no circumstances shall this policy be used arbitrarily or for arbitrary purposes, or in a manner inconsistent with the mission and values of the Charlottesville Police Department, or in a manner inconsistent with the law.

## II. PURPOSE

The purpose of this directive is to establish and describe procedures concerning the receipt, investigation, and disposition of allegations of misconduct, which result from citizen complaints or internal Department processes.

### III. DEFINITIONS

- A. Complaint: A matter of concern brought forth to the department alleging a violation(s) of departmental policy and/or a violation(s) of the law.
- B. Inquiry: A matter of concern brought forth to the department, which does not rise to a violation(s) of departmental policy and/or a violation of the law. (Also referred to as Service Related Inquiry).
- C. Garrity Warning: The Garrity Warning advises subjects of their criminal and administrative liability for any statements they may make. For purposes of this policy, the term “Garrity Warning” refers to the following statement provided to Charlottesville Police Department employees pursuant to Section V this policy: Under the decision in Garrity v. New Jersey (385 U.S. 493 1967), the information you provide for this administrative investigation cannot be used against you in any criminal proceeding, and by answering questions in connection with the investigation you are not waiving any of the rights guaranteed to you by our State or Federal Constitutions. However, you are hereby advised that your statements may be used against you in subsequent administrative proceedings. If information gathered during the investigation indicates wrongdoing or violation of departmental policy by you, then that information, including your own statements, may provide grounds for dismissal, demotion, suspension or other disciplinary action.
- D. Miranda Warning: In the decision of Miranda vs. Arizona (1966) the “Miranda Warning” is an advisement given to anyone who is in police custody and being asked to provide a statement to law enforcement. The Miranda Warning advises a person of their right to refuse to answer questions or provide information to law enforcement or other officials.
- E. Investigatory Secrecy Order: An order given to an employee that is participating in an administrative investigation that requires they not discuss the nature of the investigation they are participating in with the exception of their personal attorney, investigator assigned to the investigation or the Chief of Police.

### IV. PROCEDURES – General

#### A. Receipt of complaints

The department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. A legitimate concern or grievance is one that

is defined as being, “real, valid, or genuine,”<sup>1</sup> and “neither spurious nor false.”<sup>2</sup> All officers are obligated to explain complaint procedures to inquiring citizens and shall receive all complaints courteously and in accordance to department policy. No employee shall discourage any person from filing any complaint, and no employee shall discriminate or retaliate against any person who has filed a complaint.

**Note: Complaints received after twelve months shall not be investigated; unless the allegation states conduct which would constitute criminally felonious conduct (e.g. felony assault, grand larceny, or rape).**

B. Complaint Receiving Procedures

1. A copy of "How to Provide Comments About the Quality of Service Delivered by the Charlottesville Police Department" will be posted in the public area of the department, provided to media representatives, posted on the Charlottesville Police Department web site, and shall be given to any citizen requesting information on how to make a complaint, along with a copy of the Citizen Complaint Form (CPD-30).
2. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of citizen complaints. An employee of the department, who interferes with, discourages, or delays the making of a complaint shall be subject to disciplinary action.
3. Any and all complaints regarding the conduct of any member of this department shall be recorded on a Citizen Complaint Form (CPD-30). All complaints, regardless of nature, can be logged in person, by mail, by email, or by telephone. As part of the follow-up investigation, persons making complaints by mail, email, or telephone normally shall be interviewed and requested to complete and sign the written Citizen Complaint Form to the extent possible (CPD-30). Anonymous complaints shall be investigated in accordance with this procedure, but only to the extent possible based on the facts of the complaints.
4. A department member receiving a citizen complaint through the U.S. Mail shall place the original correspondence and accompanying envelope in a sealed envelope and forward it to the Internal Affairs Investigator, who will determine investigative responsibility. A copy of the complaint or service related inquiry shall be forwarded to the Office of the Chief of Police and the respective Division Commander.

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<sup>1</sup> Blacks' Law Dictionary (Sixth Edition), p 901.

<sup>2</sup> Merriam-Webster On line Dictionary, [www.webster.com](http://www.webster.com).

5. A department member receiving a citizen complaint through email shall place a copy of the correspondence in a sealed envelope and forward it to the Internal Affairs Investigator, who will determine investigative responsibility. A copy of the complaint or service related inquiry shall be forwarded to the Office of the Chief of Police and the respective Division Commander.
  - a. Complaints received via telephone by dispatchers or other employees shall be courteously and promptly referred to a sworn on-duty supervisor. The dispatcher or employee receiving the call shall record the name and telephone number of the complainant and inform them that a sworn on-duty supervisor will call back as soon as practical.
  - b. Non-supervisory department members shall refer all in-person citizen complaints to an on-duty sworn supervisor, who shall assist the citizen in recording pertinent information on a Citizen Complaint Form (CPD-30).
6. The supervisor receiving the complaint shall ensure that their name and assignment, as well as the date and time the complaint was received, is recorded on the Citizen Complaint Form.
7. Once the complainant completes and signs the Citizen Complaint Form, the receiving supervisor shall provide the complainant a copy of the completed Citizen Complaint Form and the telephone number of the Internal Affairs Office.
8. If the supervisor determines that the complainant appears under the influence of an intoxicant or drug or displays any trait or condition bearing on their credibility, the supervisor shall note these conditions on the Citizen Complaint Form. Any visible marks or injuries relative to an allegation of physical injury shall be noted and photographed. Photographs shall be taken for any force complaint whether or not there is visible injury.
9. Prisoners or arrestees may make complaints, although circumstances may require a department representative to meet the complainant at a jail or prison for an interview.
10. In the event of extraordinary circumstances where the person receiving a Citizen Complaint Form (CPD-30) is not a supervisor, the original report shall be immediately forwarded to the Internal Affairs Investigator. The employee will record the date and time they received the report and sign the report acknowledging its receipt. A copy of the complaint or service related inquiry shall be forwarded to the Office of the Chief of Police and the respective Division Commander.

11. The above procedure may also be used when department employees desire to enter a complaint against any other employee governed by this order.

C. Complaint-handling procedures

All received original copies of complaints shall be immediately forwarded to the Internal Affairs Investigator. A copy of the complaint or service related inquiry shall be forwarded to the Office of the Chief of Police, the respective Division Commander and the Executive Director of the Police Civilian Review Board (PCRB).

1. and the respective Division Commander.
2. Once the Chief of Police or their designee and the division commander or their designee reviews the complaint form, it is to be signed, dated, and forwarded to the Internal Affairs Lieutenant for inclusion in the administrative file.
3. The Internal Affairs Investigator shall review the complaint, record the complaint for tracking purposes, and assign investigative responsibility.
4. Upon receipt of an assigned complaint, The Internal Affairs Investigator shall mail a letter to the complainant acknowledging receipt of the complaint and provide notification that a supervisor will be in contact with them.
5. The Internal Affairs Unit Investigator will promptly notify employees named in complaints by forwarding a memorandum, along with an attached copy of the complaint to the employee through the employees' chain of command. The Internal Affairs Investigator will not notify employees in this manner if it is felt that the notification would hinder or be detrimental to the investigation.
6. A complaint alleging general misconduct or that involves the manner in which law-enforcement service is provided may be investigated by the first-line supervisor in accordance with this policy. If deemed necessary, the Internal Affairs Investigator, or someone designated by the Chief of Police, may investigate such complaints. If deemed necessary, the Chief of Police may ask another agency to undertake the investigation in situations where there is a conflict of interest or the accused member is of a command level rank.
7. A complaint alleging improper conduct, harassment, excessive force, misconduct, or which involves supervisory personnel, shall be investigated by the Internal Affairs Investigator, or someone designated by the Chief of Police. If deemed necessary, The Chief of Police may ask another agency to

undertake the investigation in situations where there is a conflict of interest or the accused member is of a command level rank.

8. Complaints alleging criminal conduct shall be immediately brought to the attention of the Chief of Police. The Chief of Police shall designate appropriate personnel to investigate the complaint, and if deemed necessary, may ask another agency to undertake the investigation.
9. The Chief of Police, or their designee, pending conclusion of the investigation may place a Department member who is the subject of an internal investigation on administrative suspension. The administrative suspension may be with or without pay, depending on the circumstances of the investigation. The employee's return to duty will be at the discretion of the Chief of Police. Administrative suspensions shall be handled in accordance with the procedures set forth in General Order 517.06 and shall take into consideration the nature of the allegation, the interests of the public, the department, and the affected employee.
10. Upon receipt of the complaint, the first-line supervisor responsible for the investigation shall have 45 days in which to complete the investigation. Investigations shall exceed the 45-day limit only upon approval by the Chief of Police. If an extension is granted, the assigned supervisor shall promptly notify the Internal Affairs Investigator in writing of the extension. The assigned supervisor shall promptly notify the complainant and named employee in writing of the continued investigation **every 30 days** from receipt of the complaint, until the investigation is completed.
11. The Internal Affairs Investigator shall have 45 days in which to complete assigned investigations. Investigations shall exceed the 45-day limit only upon approval by the Chief of Police. The assigned supervisor shall promptly notify the complainant and named employee of the continued investigation **every 30 days** from receipt of the complaint, until the investigation is completed.
11. Completed internal investigations shall be classified as:
  - a. **Unfounded** - no basis of fact to support the allegation.
  - b. **Exonerated** - allegations true, but officer is not guilty of any misconduct, due to adherence to applicable procedures, techniques, and regulations.
  - c. **Not Resolved** - unable to verify the truth or falsity of the complainant's allegations.

- d. Administratively Not Resolved - unable to collect the necessary evidence to make findings of fact necessary for a determination of the truthfulness of allegations. An example of the inability to collect the necessary evidence is the unavailability of a material witness to provide evidence. Additionally, if allegations are filed one year after the conduct complained of and the allegations do not constitute criminally felonious conduct, no internal investigation will be conducted and the allegations will be deemed Administratively Not Resolved.
  - e. Sustained - Allegations true and officer is determined to have acted in violation of applicable procedures, techniques, and regulations.
- 12. Once the investigation is completed and a finding is reached, the case file shall be forwarded to the Chief of Police through the investigating supervisor's chain of command.
  - 13. Upon the Chief's review and approval, the case file will be returned to the Internal Affairs Investigator for disposition notifications and filings.
  - 14. If the finding is unfounded, exonerated, not resolved, or administratively not resolved
    - a. The investigating supervisor will contact the complainant and invite them to come in and explain how the supervisor came to their conclusion. This meeting is designed to discuss the investigative process, evidence considered, interviews conducted and additional materials that were submitted for consideration.
    - b. The Internal Affairs Investigator shall promptly draft a letter to the complainant, with a copy of the investigating supervisor's justification for the finding, signed by the Internal Affairs Investigator, notifying them of the completion of the investigation. The Internal Affairs Investigator shall promptly notify the employee and the employee's chain of command in writing of the complaint disposition and attach a copy of the disposition letter sent to the complainant. The complainant will also be notified of their opportunity to speak with the investigating supervisor, Internal Affairs Investigator, or the Chief of Police with regard to the finding.  
Note: All final correspondence will be reviewed by the Chief of Police, or their designee.
  - 15. If the finding is Sustained,
    - a. The Internal Affairs Investigator shall forward the case file to the employee's Commanding Officer to seek a recommendation for discipline. The employee's chain of command, beginning at the

employee's first line supervisor, shall submit a written disciplinary recommendation in accordance with department Disciplinary Procedures (General Order 517.00). After completing the disciplinary recommendation, the Division Commander shall forward the file to the Chief of Police for final approval.

- b. The Chief of Police shall apply discipline in accordance with the Disciplinary Procedures (General Order 517.00) and return the case file to the Internal Affairs Investigator. The Internal Affairs Investigator shall draft a Chief's Directive, signed by the Chief of Police, to the employee through the employee's Commanding Officer, who will ensure the employee is notified in person of the discipline.
- c. A copy of the Chief's Directive signed by the employee shall be returned to the Internal Affairs Investigator for filing and documentation.
- d. The investigating supervisor will contact the complainant and them to come in and explain how the supervisor came to their conclusion. This meeting is designed to discuss the investigative process, evidence considered, interviews conducted, and additional materials that were submitted for consideration.
- e. The Internal Affairs Investigator shall promptly draft a letter to the complainant, with a copy of the investigating supervisor's justification for the finding, signed by the Internal Affairs Investigator, notifying them of the completion of the investigation. The Internal Affairs Investigator shall promptly notify the employee and the employee's chain of command in writing of the complaint disposition and attach a copy of the disposition letter sent to the complainant. The complainant will also be notified of their opportunity to speak with the investigating supervisor, internal affairs investigator, or the Chief of Police with regard to the finding. Specific discipline will not be disclosed, but a copy of the disciplinary matrix will be provided to the complainant upon request.
- f. For file documentation purposes, the employee's supervisor shall forward a memorandum to the Internal Affairs Investigator outlining administration of the discipline ordered by the Chief of Police.
- g. Although the application of discipline to department personnel is exempt from public disclosure pursuant to a FOIA request; the Chief of Police may release this information to the public if it is believed to be in the best interest of the community. Note: All final correspondence will be reviewed by the Chief of Police, or their designee.

16. Civilian Review Board Investigation Review



The complainant may request the Charlottesville Police Civilian Review Board to review a completed investigation within seventy-five (75) days of the date of the letter sent to the complainant upon completion of the investigation stating the finding of the investigation.

## V. PROCEDURES: Investigative

Two types of investigations may be initiated: administrative and criminal. Different rules govern interviews of employees in each case. Before any interview, the employee under investigation shall receive a confidential written notice of the complaint, along with a Garrity Warning for administrative investigations, or a Miranda advice of rights for criminal investigations.

### A. Interview for administrative purposes

1. If the department wishes to compel an employee to answer questions directly related to their official duties and the department is willing to forego the use of any answers in a criminal prosecution, the interviewer shall advise the employee, through a Notice of Required Participation in Administrative Investigation form, that:
  - a. The employee will be questioned and requested to testify as part of an official administrative investigation by the Charlottesville Police Department.
  - b. Such investigation is being conducted at the authority of the Chief of Police.
  - c. The inquiry involves an incident and/or complaint and the inquiry will be conducted in accordance with departmental policies and procedures on the date and time indicated.
  - d. The inquiry is not part of a criminal investigation and no *Miranda* rights are required in an interview for administrative purposes.
  - e. The employee must answer all questions related to their knowledge of the facts surrounding all matters under investigation.
  - f. At such time as it becomes apparent that a department member has become the focus of an administrative investigation, the member shall be provided with a summary of the alleged allegation in writing prior to questioning.

2. The interviewing officers shall use the Charlottesville Police Department's "Notice of Required Participation in Administrative Investigation" form.

B. Investigations involving criminal conduct

1. Complaints alleging on or off-duty/extra-duty employee criminal conduct shall be immediately brought to the attention of the Chief of Police. The Chief of Police shall designate an appropriate department member to investigate the complaint, and if deemed necessary, may ask another agency to undertake the investigation.
2. If the assigned investigator of an on-going administrative investigation identifies the investigation to have a criminal basis for prosecution, they shall immediately notify the Chief of Police. The Chief of Police shall designate an appropriate department member to investigate the criminal complaint, and if deemed necessary, may ask another agency to undertake the investigation.
3. The Chief of Police shall determine whether the initial investigator will continue with a parallel administrative investigation of the employee's alleged non-criminal conduct.

C. Interviews for criminal investigative purposes

During an ongoing criminal investigation the interviewer shall:

1. Give the employee *Miranda* rights; and
2. advise the employee that if they assert their right not to answer questions, no adverse administrative action will be taken based upon the refusal.
  - a. If the employee decides to answer questions at this point, the responses may be used in *both* criminal and administrative proceedings.
  - b. Note that the *Miranda* admonition includes the provision that an interviewee may request to have a lawyer present at an interview. Although technically the employee has no right to counsel until the employee has been criminally charged or his or her freedom of action has been deprived, the department wishes the employee to have the option. The department wishes no possibility to arise in which its actions might be construed as coercive.

D. Officer Involved Critical Incidents

Investigations involving officer involved critical incidents shall be handled in accordance with the procedures set forth in General Order 522.10.

## VI. **Investigative Tools and Resources**

In addition to interviews of the employee and witnesses, the Chief of Police may require other activities in support of a complaint investigation or internal investigation. Such decisions are not to be made arbitrarily by the Chief but shall take into account the nature of the investigation and the rights, duties, and responsibilities of the Chief's position and the rights, duties, and responsibilities of the employee. Such procedures may include, as permitted by law, the following:

### A. Medical and laboratory examination

1. The Chief of Police or officer in authority may, based on an observation of conduct or appearance creating a reasonable suspicion that an officer may be under the influence of alcohol or drugs, require a department employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.
2. Drug and alcohol screenings will be conducted in accordance with the City's substance abuse policies and procedures and in accordance with the Code of Virginia § 9.1-501.

### B. Photograph and lineup identification procedures

1. As part of an administrative investigation, officers may be required to stand in a lineup for viewing by citizens for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup during an administrative investigation is grounds for disciplinary action and may result in dismissal. While law permits this, careful consideration shall be given to the nature of the allegation and the unlikelihood of identifying the accused parties by other available means.
2. Photographs of department employees may be maintained for the purpose of identification by citizens of employees accused of misconduct. Photo lineups should be prepared utilizing acceptable standards and procedures. Under no circumstances shall these photographs be used for purposes other than investigative.
3. Photographs or videotape pictures of employees, with or without their knowledge, may be taken for the purpose of internal investigations as related to the employee's job when the employee is suspected of misconduct. When using such images, the Chief of Police shall consider the nature of the

investigation and the circumstances under which the images were taken in determining the reasonableness of their use.

C. Financial disclosure statements

In accordance with Virginia Code Section 9.1-503, an employee may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding.

D. Polygraph

1. All personnel shall be required to submit to a polygraph when ordered to do so by written directive by the Chief of Police related to an internal administrative investigation concerning allegations of misconduct or criminal activity. In giving such an order the Chief of Police shall consider the nature of the allegations in determining the reasonableness of using this investigative tool or process.
2. The Chief of Police may order an employee to take a polygraph, related to an internal administrative investigation, when accused of a Category E or Category F offense(s). These categories are listed and described in General Order 517.00.
3. The results of the polygraph examination shall not be used as the sole basis for disciplinary or other employment action.
4. Any polygraph examination given under the provisions of this order shall be administered by a private contractor licensed to administer polygraph examinations in the Commonwealth of Virginia. This person may be a licensed examiner from another law-enforcement agency. No employee of this department shall administer an examination to another employee.
5. Refusal to submit to a polygraph examination related to an internal administrative investigation or to answer all questions pertaining to the charges in such polygraph examination shall be grounds for disciplinary action and may result in dismissal from the department. In the context of criminal investigation, an officer may invoke his 5<sup>th</sup> Amendment right to refuse to answer any questions, without adverse action for refusing to answer
6. The following information must be provided to the employee asked to submit to a polygraph examination:

- a. The nature of the inquiry, the name and rank of the investigating officer, and the name and rank of any person present during the examination.
- b. Whether their answers may be used against them in a criminal prosecution:
  - i. That they may refuse to take the polygraph or answer any questions; however in administrative investigations, this refusal shall be grounds for disciplinary action, which may include dismissal; and
  - ii. that in the context of a pending or potential criminal investigation, answers given during the polygraph examination does not constitute a waiver of the privilege against self-incrimination as it relates to criminal matters.
- c. A "Polygraph Examination Acknowledgement of Rights" form must be initialed and signed in the spaces indicated. Refusal to sign the form shall be grounds for disciplinary action, which may result in dismissal.

E. Investigatory Secrecy Orders

Secrecy orders may be issued to employees involved in an administrative investigation when the investigator deems such order necessary to maintain the integrity of the investigation and to prevent possible collusion between witnesses. Employees violating such order shall be subject to disciplinary action.

F. Workplace Searches

Where the department suspects that an employee has engaged in workplace misconduct, it may conduct an evidentiary search of property or work areas assigned to that employee. Property and areas which may be subject to a search could include, without limitation, the following: desks and their contents, file cabinets, computers and related applications, storage lockers, department vehicles assigned to the employee, etc. When conducting workplace searches for administrative purposes, the Chief of Police shall ensure strict compliance with applicable case law {O’Conner v. Ortega, 480 U.S. 709 (1987)} and shall consider the nature of the violation and the reasonableness of the search before undertaking such an action.

**VII. Internal Affairs Files**

- A. The department shall maintain a log of all complaints.

- B. Files of completed investigations shall be maintained in a secured internal affairs file located in the Internal Affairs Office.
- C. The complaints and internal investigative files shall be kept in a secure area and shall be retained in accordance with the Library of Virginia's minimum records retention period applicable to those records. Thereafter, no such records shall be destroyed unless the Chief of Police, following consultation with the City Attorney, determines that there is no further agency need, legal or administrative, to maintain the records.
- D. The Chief of Police shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy.
- E. The Chief of Police shall publish an annual or other periodic summary of complaints that shall be made available to the public.

### **VIII. Due Process**

- A. The Fourteenth Amendment to the Constitution provides that a citizen may not be deprived of "life, liberty, or property, without due process of law." Public employees have a limited property interest in continued employment sufficient to require due process in any administrative proceedings that might result in suspension or dismissal.
- B. The City of Charlottesville's grievance procedure allows for grievances to be filed in certain cases involving dismissals, demotions, and suspensions resulting from disciplinary action or unsatisfactory job performance. Sworn police officers may either follow the City's grievance procedure or the procedure set forth in the Law Enforcement Officers' Procedural Guarantees, Code of Virginia §9.1-500 through §9.1-507. Officers who follow the provisions of the Law Enforcement Officers' Procedural Guarantees do not later have access to City grievance procedures to address the same complaint. The City's grievance procedures are located in the City's personnel regulations and a copy of the procedures may be obtained from Human Resources.
- C. Review of Personnel Files
  - 1. Department personnel may review their official personnel files kept in the police department by submitting a request in writing to the Office of the Chief of Police. The secretary to the Chief of Police is authorized to allow personnel to review their file, which must remain in the Office of the Chief of Police during review. After reviewing his file, the officer may request removal of certain documents on the grounds of inaccuracy. These documents may be removed only at the discretion of the Chief of Police. Copies of documents may be made with approval of the Chief of Police.

2. Department personnel who desire to review their personnel files kept in the Human Resources Office must make a request in writing to the Director of Human Resources. After reviewing their file, the officer may request removal of certain documents on the grounds of inaccuracy. These documents may be removed only at the discretion of the Human Resources Director. Copies of documents may be made with approval of the Director of Human Resources.