ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Section R2-16-101, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-101. Definitions

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

Article 2, consisting of Sections R2-16-201 through R2-16-210, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-201. Protecting the Identity of a Complainant or Witness
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R2-16-209. Prohibition against Discussing Open Complaint Investigations
R2-16-210. Summaries of Closed Cases

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

Article 3, consisting of Sections R2-16-301 through R2-16-306, amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

Article 3, consisting of Sections R2-16-301 through R2-16-306, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-301. Exhausting Reasonable Alternatives within the Agency
R2-16-302. Inmate Complaints
R2-16-303. Resolution without Investigation
R2-16-304. Anonymous Complaints
R2-16-305. Filing Complaints
R2-16-306. Complaints Alleging Employee Misconduct

ARTICLE 4. CONDUCTING INVESTIGATIONS

Article 4, consisting of Sections R2-16-401 through R2-16-405, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-401. Notice
R2-16-402. Expired
R2-16-403. Closing Cases
R2-16-404. Findings
R2-16-405. Recommendations

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

Article 5, consisting of Sections R2-16-501 through R2-16-503, amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

Article 5, consisting of Sections R2-16-501 through R2-16-503, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-501. Preliminary Report
R2-16-502. Final Report
R2-16-503. Advising the Complainant

ARTICLE 1. GENERAL PROVISIONS

R2-16-101. Definitions

In addition to the definitions provided in A.R.S. § 41-1371, the following apply in this Chapter:

1. “Complainant” means a person who files a complaint with the Office.
2. “Confidential information” means oral or written information, including a record, for which restricted access is required by federal or Arizona law. Confidential information also includes identifying personal information a complainant or witness requests not be disclosed.
4. “Misconduct” means any act or omission by an employee that constitutes a material or substantial breach of the employee’s duties or obligations or that adversely affects a material or substantial interest of the employer.
7. “Photograph” means a paper or electronic photographic representation, photographic file, motion picture, video tape, microfilm, or microphotograph.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

R2-16-201. Protecting the Identity of a Complainant or Witness

The Office shall not release to an agency, the public, or anyone else, information that reveals the identity of a complainant or witness without permission from the complainant or witness.
R2-16-208. Returning a Confidential Document to a Complainant

When requested, the Office shall return a confidential document received from a complainant to the complainant. The Office shall not release a confidential document to anyone other than the complainant unless the complainant provides written authorization for release of the document to a third party or the Office determines that the document was not lawfully in the possession of the complainant.

Historical Note

R2-16-209. Prohibition against Discussing Open Complaint Investigations

The Office shall not discuss an open complaint investigation with the general public or the media.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-210. Summaries of Closed Cases

The Office shall make available to the public a summary of a closed case if the Office determines that the summary will assist in the management of a state government program, respond to an inquiry about the performance of a state program, or inform the public about the activity and performance of the Office. The Office shall ensure that the summary does not disclose identifying information about a complainant or witness whose identity is protected, confidential investigator notes, or confidential information received from an agency.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

R2-16-301. Exhausting Reasonable Alternatives within the Agency

A. The Office shall make inquiry of the complainant and the agency to determine whether a complainant has exhausted all reasonable alternatives to resolve a complaint within an agency before initiating an investigation.

B. If the complainant has not made a reasonable effort to resolve the complaint within the agency, the Office shall refer the complainant to the appropriate person or office within the agency and provide the complainant information about available steps to resolve the complaint.

C. The Office shall defer action in a matter that is being litigated in the courts or is the subject of a current formal administrative procedure unless the ombudsman-citizens’ aide determines that immediate action is necessary to protect the public health, safety, or welfare.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by
B. If an investigation of an allegation of misconduct by a state employee results in a final report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the final report before submitting the final report to the agency and shall include the employee’s written response, if any, with the final report that is forwarded to the agency.

1. The employee shall have 15 working days to respond to the final report, unless the ombudsman-citizens’ aide believes a 15-day delay will cause significant harm.
2. An employee may request an extension of time in which to respond to the final report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens’ aide believes an extension will cause significant harm.

C. If an investigation of an allegation of misconduct by a state employee results in a final report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the final report before submitting the final report to the agency and shall include the employee’s written response, if any, with the final report that is forwarded to the agency.

1. The employee shall have 15 working days to respond to the final report, unless the ombudsman-citizens’ aide believes a 15-day delay will cause significant harm.
2. An employee may request an extension of time in which to respond to the final report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens’ aide believes an extension will cause significant harm.

**ARTICLE 4. CONDUCTING INVESTIGATIONS**

**R2-16-401. Notice**

When it will not compromise the effectiveness of an investigation, the Office shall exercise the right of access under A.R.S. § 41-1378 by giving the agency at least 10 days notice before conducting interviews, examining necessary records, or requiring the production of information. An agency may request an extension to this period for a compelling reason. The ombudsman-citizens’ aide shall grant a request for extension unless the ombudsman-citizens’ aide believes a delay will cause significant harm or damage.

**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

**R2-16-402. Expired**

**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

**R2-16-403. Closing Cases**

The Office may close a case for any of the following reasons:

1. **Discontinued.** The ombudsman-citizens’ aide determines that an investigation should be terminated before the investigation is completed because:
   a. Disclosure of the complainant’s identity is necessary to enable full investigation and the complainant refuses to allow the disclosure;
b. Information or a record is requested from the complainant and the complainant fails to produce the information or record within the time specified by the Office;

c. The complainant withdraws the complaint;

d. The complaint relates to a matter that has become the subject of an administrative or judicial proceeding;

e. The Office forwards the complaint to an appropriate prosecutor because it involves possible criminal activity; or

f. The ombudsman-citizens’ aide determines there is other good cause not to proceed with an investigation;

2. Closed - not substantiated. Following an investigation, the ombudsman-citizens’ aide makes a finding that the allegations in the complaint are not substantiated;

3. Closed - complaint resolved (before preliminary report). Following an investigation, the ombudsman-citizens’ aide determines that the complaint has merit, either wholly or in part, and, before a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the agency and the ombudsman-citizens’ aide;

4. Closed - complaint resolved (after preliminary report). Following an investigation, the ombudsman - citizens’ aide determines that the complaint has merit, either wholly or in part, and, after a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the ombudsman-citizens’ aide;

5. Closed - complaint unresolved. Following an investigation, the ombudsman - citizens’ aide determines that the complaint has merit, either wholly or in part, and the agency does not accept the recommendations of the ombudsman - citizens’ aide;

6. Other. Any other reason the Office determines requires that a complaint be closed.

**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

**R2-16-405. Recommendations**

A. In accordance with A.R.S. §§ 41-1376 and 41-1379, the Office shall recommend a resolution to a complaint when a completed investigation results in a finding of “substantiated” or “partially substantiated.”

B. The Office shall not recommend that a specific employee disciplinary action be imposed.

**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

**ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS**

**R2-16-501. Preliminary Report**

A. Before issuing an opinion or recommendation, the Office shall consult with the agency and send a confidential preliminary report to the agency.

B. In accordance with A.R.S. § 41-1379, the Office or agency may share a preliminary report with other state officials only if it is necessary to resolve the complaint, but shall not publicly disclose the contents of the preliminary report.

C. An agency may seek modification of an opinion or recommendation presented in the preliminary report by including a request for modification in a written response submitted within 15 working days of receiving the preliminary report.

D. An agency may request, for a compelling reason, an extension to the time in which to respond. The Office shall grant an agency’s request for extension, unless the ombudsman-citizens’ aide believes an extension will cause significant harm or damage.

E. The Office shall consider an agency’s request for modification of an opinion or recommendation before it prepares the final report and shall notify the agency of the acceptance or rejection of the request within 15 working days of receiving the request.

F. If an agency does not request modification, the preliminary report becomes the final report 15 working days after the agency receives the preliminary report.

**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

**R2-16-502. Final Report**

A. After the Office receives an agency’s response, if any, to a preliminary report and makes accepted modifications to the preliminary report, or if no timely response is filed, the Office shall send the final report to the chief executive officer of the agency.

B. If the Office requests that an agency respond to a final report, the agency shall respond to the Office, in writing, within 20 working days after receiving the final report. The agency shall include in the response the agency’s decision to accept or reject a recommendation. If the agency accepts a recommen-
C. If the ombudsman-citizens’ aide determines that an early response to a final report is necessary to protect the public health, safety, or welfare, the Office shall require an agency to respond on a date sooner than 20 working days. Additionally, the ombudsman - citizens’ aide may extend a response period for good cause at the request of an agency.

**Historical Note**
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

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**R2-16-503. Advising the Complainant**

A. The Office shall provide a final response to a complainant. If requested by the complainant, the Office shall provide the final response in writing.

B. Before releasing a final report to any person not authorized to receive confidential information, the Office shall purge the final report of any confidential information.

**Historical Note**
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).