



ADMINISTRATIVE GUIDE

Section: General Regulations

Procedure No: 304-10

FALSE OR MISLEADING STATEMENTS

DATE EFFECTIVE:
08/26/21

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I.O. 78

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PURPOSE

To provide clear guidelines regarding written and verbal statements made by members of the service during an official investigation.

DEFINITIONS

FALSE STATEMENT - An intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made.

MISLEADING STATEMENT - A statement that is intended to misdirect the fact finder, and materially alter the narrative by:

- a. Intentionally omitting a material fact or facts,
- b. Making repeated claims of "*I do not remember*" or "*I do not know*" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts, or
- c. Altering and/or changing a member's prior statement or account when a member of the service is confronted with independent evidence indicating that an event did not occur as initially described, will generally be considered a misleading statement.

INACCURATE STATEMENT - A statement that a member of the service knows, or should know, includes incorrect material information. There is no intent to deceive, but rather the member's actions are grossly negligent.

MATERIAL FACT - A significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail.

IMPEDING - Making false, misleading, and/or inaccurate statements, or engaging in an impeding action (e.g., failing to produce records as directed by a competent authority, etc.).

PROHIBITED CONDUCT

1. Intentionally making a false official statement.
2. Intentionally making a misleading official statement.
3. Making, or causing to be made, an inaccurate official statement.
4. Impeding an investigation.

ADDITIONAL DATA

Intentionally making a false official statement regarding a material matter will result in separation from the Department, absent extraordinary circumstances. Extraordinary circumstances will be determined by the Police Commissioner on a case by case basis.

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ADDITIONAL DATA (continued)

*Circumstances in which false or misleading official statements are made include, but are not limited to, verbal statements made pursuant to a statutory or procedural requirement, or under oath during a civil, administrative, or criminal proceeding, in addition to written statements made in a sworn document, including affirmations made in Department (e.g., **COMPLAINT REPORT [PD313-152]**, etc.) and non-Department (e.g., **New York State Domestic Incident Report [DCJS-3221]**, etc.) forms.*

Statements made during an official Department interview conducted pursuant to P.G. 206-13, “Interrogation of Members of the Service,” an interview conducted by the New York State Attorney General’s Law Enforcement Misconduct Investigative Office pursuant to P.G. 211-09 “Appearances by Members of the Service Before Governmental Agencies or Private Organizations,” or an interview pursuant to P.G. 211-14, “Investigations by Civilian Complaint Review Board” are subject to the provisions of this procedure. In addition, members of the service are reminded that the Civilian Complaint Review Board has been granted broadened prosecutorial authority to investigate potential false statements and recommend penalties.

When a member of the service is afforded an opportunity to recollect with the benefit of credible evidence, and the member makes a statement consistent with the evidence, the member’s prior statement will not be considered a false statement. However, it may be considered a misleading statement, or an inaccurate statement, or in cases where further investigative steps were required after the statement was made, may also be considered an action impeding the investigation.

If, during an investigation or proceeding, a member of the service intentionally makes a false statement, but then retracts the statement and substitutes a truthful statement during the same interview, deposition, or other session of oral testimony, a charge of false statement may not be appropriate.

Mistakes distinguished: Mere clerical errors may not be considered inaccurate statements when the statement error is so minor that it has little, or no effect, on the overall intent of the statement. An error will be considered to be an inaccurate statement when a member of the service does not intend to deceive, but causes a material variation. Erroneous statements, lacking in willful intent, and not so unreasonable as to be considered gross negligence, are not a basis for finding misconduct.

Members of the service have an obligation to review documents before signing, or otherwise verifying, their accuracy.

An investigation is considered impeded when a member of the service makes false, misleading, and/or inaccurate statements, or engages in impeding actions (e.g., failure to produce records as requested by a competent authority, etc.). A member of the service who impedes, or attempts to impede, an official investigation will face disciplinary action for conduct prejudicial to the good order, efficiency, or discipline of the Department.

The Department will not bring false official statement charges in situations where, as opposed to creating a false description of events, the member of the Department merely pleads not guilty in a criminal matter, or merely denies a civil claim or an administrative charge of misconduct.