

INTERNAL AFFAIRS

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| POLICY & PROCEDURE NO. 4.01 | ISSUE DATE: 07/01/2003 |
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| MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 52.1.1; 52.1.2; 52.1.3; 52.1.4; 52.2.1; 52.2.2; 52.2.3; 52.2.4; 52.2.5; 52.2.6; 52.2.7; 52.2.8 | REVISION DATE: 07/01/2014 |
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I. GENERAL CONSIDERATIONS AND GUIDELINES

A relationship of trust between the employees of this police department and the citizens of the community is essential. As such, all police employees are expected to conduct themselves in such a manner as to reflect favorably upon themselves and the department.

To a large degree, the public image of this department is determined by how well it responds to allegations of misconduct against the department or its officers. To that end, the objectives of an Internal Affairs investigation are:

- Protection of the public;
- Protection of the employee;
- Protection of the department;
- Removal of unfit personnel; and
- Correction of procedural training problems.

All alleged or suspected violations of laws, ordinances, by-laws, department rules, regulations, policies, procedures, and orders (verbal or written) must be investigated according to the procedures outlined for each.

II. POLICY

It is the policy of this department to:

- A. Investigate all complaints, including anonymous complaints, against the department or a member of the department, regardless of the source of

such complaints, through a regulated, fair, and impartial Internal Affairs Program; [52.1.1]

B. Determine whether or not such complaints are valid; and

C. Take appropriate action.

III. PROCEDURES

A. Complaint Procedures

1. PUBLIC NOTICE [52.1.4]

a. The procedure for filing a complaint against an employee or the agency is available to the public and is posted:

- 1) On the department web site; and
- 2) In the lobby of the police facility; and
- 3) Erving Town Hall

b. Any employee asked by a member of the public about the procedure to file a complaint should be so advised by that employee.

2. COMPLAINT REPORT

a. A standard complaint report form should be used to record all complaints of misconduct, mistreatment, or unethical practices against police department personnel, whether registered by a citizen, initiated from within the police department, or forwarded by another governmental agency.

b. The following information shall be included on the complaint report:

- 1) Date and time of complaint report;
- 2) Name, address, and telephone number of the complainant;
- 3) Name, address and telephone numbers of any witnesses to the reported incident;
- 4) Name, rank, badge number (or description) of the employee against whom the complaint is made;
- 5) Date, time and location of the reported incident;
- 6) Complainant's description of the incident which resulted in the complaint;
- 7) Signature of complainant; if complainant refuses to sign, note such on the complaint.

- 8) Signature of parent or guardian if complainant is under eighteen years of age; if parent or guardian refuses to sign, note such on the complaint;
- 9) Name, rank and signature of supervisor receiving complaint report; and
- 10) A statement that the complainant will receive a response from the department within thirty (30) days regarding the status or conclusion of the investigation.

B. Receiving and Recording Complaints

1. GENERAL PROCEDURES

- a. This department shall maintain a record of all complaints against the agency or its employees. [52.1.2]
- b. The duty officer at the time the complaint is made shall be responsible for receiving and making a complete recording of any complaint of police employee misconduct made by a citizen in person or received by telephone.
- c. This initial contact between a complaining citizen and police authorities is a most important stage in the complaint process, as the complainant is often tense, angry, and emotionally upset, and the potential for hostility is great.
- d. Courtesy and cooperation should be extended to all citizens registering complaints or otherwise inquiring about complaint procedure.
- e. No person shall be denied an opportunity to register a complaint, nor shall any such person be directed to return or call back later.
- f. Every complaint report form shall be given an identifying number, so that the processing of complaints can be carefully monitored. This identifying number will be assigned by the Chief of Police.

2. IN-PERSON COMPLAINTS

- a. Citizens making complaints in person shall be requested to read over their completed reports, to make any necessary corrections or additions and to sign their complaints.
- b. If a complainant refuses to sign a complaint, a notation to that effect shall be made on the complaint form.

3. TELEPHONE COMPLAINTS

- a. Citizens making complaints by telephone shall be informed that their signed complaint is requested; however, no telephone complaint shall be refused or rejected because the complainant

does not wish to sign a complaint form or because [s]he does not wish to be identified.

- b. The supervisor taking the complaint shall incorporate it in a complaint report.

4. COMPLAINTS RECEIVED BY MAIL/ELECTRONIC MAIL

- a. If a complaint of misconduct or mistreatment by a department employee is received by mail or e-mail, the allegations shall be incorporated in a complaint report and the original communication attached thereto.
- b. If the information so received is insufficient or incomplete, the complainant shall be contacted, if possible, and informed of the department complaint procedure and any necessary additional information obtained.

5. DEPARTMENTAL COMPLAINTS: Formal departmental complaints of misconduct against a department employee shall be initiated by the preparation of a standard complaint report form.

6. COMPLAINTS BY PRISONERS: Any prisoner who alleges misconduct or mistreatment by a department employee shall be advised by the shift supervisor of his/her right to submit a complaint report and such complaints shall be investigated and processed in the same manner as other citizen complaints.

7. COMPLAINTS FROM GOVERNMENTAL AGENCIES: When information is received or obtained from other governmental agencies alleging specific acts of misconduct against a department employee, this information shall be recorded on a standard complaint report form and an investigation initiated in the usual manner.

8. STREET COMPLAINTS: If an officer on the street is approached by a citizen regarding a complaint of alleged misconduct against an employee of the police department, the officer shall inform such person that his/her complaint should be directed to the shift supervisor.

9. VERIFICATION OF RECEIPT [52.2.4(A)]

- a. Every person making a complaint against a department employee shall receive a copy of his/her complaint to serve as a receipt verifying that such complaint has been received and is being processed.
- b. When a complaint is made in person, the supervisor receiving the complaint will ensure that the complainant receives a copy of his/her complaint to serve as a written verification that the complaint has been received.

- c. When a complaint is received over the telephone or through the mail, the complaint will be forwarded to the Chief of Police who shall be responsible for ensuring that the complainant is sent a copy of his/her complaint to serve as a written verification that the complaint has been received, provided that the complainant can be identified.

C. Immediate Action

1. IMMEDIATE RESOLUTION

- a. In some cases, the resolution of a complaint may be accomplished by the shift supervisor if the incident is clearly not of a serious nature, or arises from a misunderstanding or lack of knowledge of the law or of the limitation of a police officer's authority.
- b. Under no circumstances, however, will a justifiable complaint be refused, delayed, or otherwise rejected in this manner.
- c. The supervisor addressing the complaint shall report the facts of the incident and subsequent resolution to the Chief of Police in writing or by e-mail. The resolution may also be acknowledged in writing by the complainant.

2. NOTIFICATION OF CHIEF: If the substance of a complaint against the agency or its employees, if proven, would be of grave nature or is an accusation of a serious crime, the Chief shall be notified forthwith. [52.2.2]

3. RELIEF OF EMPLOYEE FROM DUTY [52.2.7]

- a. A supervisor may place an employee on immediate administrative leave for the remainder of his/her shift, pending notification of the Chief of Police. Such action may be taken when a complaint is of a serious nature and, in the opinion of the supervisor, may be credible, or when the supervisor believes that such action is in the best interest of the department, such as:
 - 1) Insubordination;
 - 2) Fitness for duty.
- b. The employee shall only be relieved from duty otherwise at the direction of the Chief of Police, in accordance with statutory and collective bargaining provisions.

D. Investigation of Complaints

1. OFFICER-IN-CHARGE OF INTERNAL AFFAIRS INVESTIGATIONS

- a. A superior officer may be assigned by the Chief of Police as the officer-in-charge of Internal Affairs investigations and shall be responsible for supervising Internal Affairs investigations.

- b. The position responsible for the internal affairs function has the authority to report directly to the Chief of Police. [52.1.3]

2. CATEGORIES OF COMPLAINTS

- a. Complaints Investigated by Supervisor
 - 1) Criteria for the assignment of an investigation to a shift supervisor or officer-in-charge of the station may include, but are not limited to: [52.2.1(a)]
 - a) Alleged rudeness;
 - b) Tardiness; and
 - c) Minor cases of insubordination.
 - 2) Reports of investigations performed by shift supervisors shall be forwarded and reviewed by the Chief of Police.
- b. Complaints subject to an Internal Affairs Investigation: The criteria for determining the categories of complaints to be investigated by Internal Affairs include, but are not limited to, allegations of: [52.2.1.(b)]
 - a) Corruption;
 - b) Brutality;
 - c) Use of excessive force;
 - d) Violation of civil rights;
 - e) Criminal misconduct; and
 - f) Any other matter as directed by the Chief.

E. INTERNAL AFFAIRS INVESTIGATIONS

- 1. NOTIFICATION OF EMPLOYEE [52.2.5]
 - a. The affected employee shall be provided a written statement of the allegations against him/her (Notification of Charges/Allegations Form), unless the Chief determines that disclosure might jeopardize an investigation.
 - b. When an employee is notified that [s]he has become the subject of an internal affairs investigation, shall issue the employee:
 - 1) A written statement of the allegations; and
 - 2) The employee's rights and responsibilities relative to the investigation.
 - c. If the employee was not notified by order of the Chief, [s]he must receive written notification prior to any interrogation, being

directed to submit a report regarding the complaint, or an administrative or criminal hearing.

- d. The written statement of the allegations to the employee will include the employee being advised of his/her rights and responsibilities relative to the investigation.

2. STATUS REPORTS

- a. The officer-in-charge of Internal Affairs investigations shall be responsible for providing the Chief of Police with status reports on the progress of the investigation every seven (7) days. These reports shall contain all pertinent information relating to the progress of the investigation.
- b. In all cases of reporting, except anonymous reports, the complaining party shall periodically receive information regarding the status of the investigation. Notification should be made:
[52.2.4(b)]
 - 1) Upon an investigator's being assigned or change of investigator;
 - 2) Every thirty days if extended; and
 - 3) Upon completion of the investigation. See Duties of Chief in this policy.

3. TIME LIMITS OF INVESTIGATION [52.2.3]: Any Internal Affairs investigation must be commenced immediately upon receipt of the complaint and must be completed within thirty (30) days.

- a. If extenuating circumstances preclude completion within thirty (30) days, the Internal Affairs investigator shall request an extension from the Chief of Police in writing, and provide written notification to the employee (if previously notified of the complaint and investigation) and complainant of the delay.
- b. If the investigation is not completed within thirty days, the investigator shall provide the complainant with a progress report every thirty days until the completion of the investigation.

4. OFF-DUTY CONDUCT: An internal administrative investigation may inquire into a department employee's on-duty or off-duty conduct if such inquiry is reasonably and directly related to the employee's performance of duty, if such conduct affects the employee's fitness or ability to continue in the police service, or reflects discredit on the department.

5. CRIMINAL WRONGDOING

- a. If it is determined, generally after a preliminary investigation, that allegations against a department employee could result in a

criminal prosecution, the accused employee must be granted all applicable constitutional and statutory rights.

- b. Prior to being questioned regarding alleged personal involvement in criminal activity, a department employee shall be given the Miranda warnings, including the right to have an attorney present during any such questioning, prior to custodial interrogation.
- c. After Miranda warnings have been given, any voluntary statement made thereafter could be admissible in a criminal proceeding, and it may otherwise be used for departmental disciplinary purposes.
- d. A department employee who is being questioned about alleged personal involvement in criminal activity which could result in a criminal prosecution cannot be discharged or otherwise penalized, solely for invoking the right to remain silent as guaranteed by the Fifth Amendment or for refusing to sign a waiver of immunity. ¹
- e. An employee may be compelled to answer questions narrowly drawn and related to his/her on- or off-duty conduct, and may be disciplined (including discharge) for failure to answer truthfully.

6. DEPARTMENTAL DISCIPLINARY ACTION

- a. If it is determined as a result of a preliminary investigation that allegations made against a department employee could result in departmental disciplinary action, the accused employee is entitled to a fair and objective investigation and resolution of the charges made.
- b. Employees Compelled to Answer Questions
 - 1) All department employees, when requested by the Chief, or by a superior officer designated by the Chief, must respond fully and truthfully to all questions regarding their performance of official duties or their off-duty misconduct which affects their fitness or ability to remain in the police service.
 - 2) Any failure to answer completely and truthfully to such inquiries may be punished by appropriate disciplinary action, including dismissal from the department.²
 - 3) The official conducting the interrogation must, at the time of the interrogation, specify if the employee or his/her counsel or representative asks the precise repercussions (i.e., suspension, discharge, or the exact form of discipline) that will result if the officer fails to respond.³
 - 4) When a department employee, after declining to do so voluntarily, is ordered to submit a report or to answer questions under a threat of the penalty of discipline, that employee must

receive transactional immunity from criminal prosecution for any offenses to which the compelled testimony relates.

- a) The Supreme Judicial Court has held that Article 12 of the Massachusetts Declaration of Rights requires "transactional" immunity to supplant the privilege against self-incrimination when a public employee is being compelled to answer questions concerning possible criminal activities connected with his employment. Transactional immunity grants "immunity from prosecution for offenses to which compelled testimony relates."⁴
- b) If the questions specifically, directly, and narrowly relate to the employee's performance of official duties or his/her off-duty conduct which affects his/her fitness or ability to remain in the police service, and if such employee is informed that [s]he will receive transactional immunity from criminal prosecution, [s]he must answer or face disciplinary action, including dismissal from the department, for refusing to answer such questions.
- c) The Chief shall secure a written grant of transactional immunity from the Attorney General's Office. An employee may decline to answer questions in a criminal investigation until such documentation is received.

7. UNION REPRESENTATION

- a. In conducting internal administrative investigations, in the absence of a requirement in a collective bargaining agreement, there is no legal obligation for the police department to provide department employees with an opportunity to consult with an attorney before being questioned on work-related matters;⁵ however, a request for an attorney or an employee representative to be present will be granted if the investigation is not thereby unduly delayed.
 - b. Except in unusual situations, any interview or questioning should take place during the employee's regular duty hours.
 - c. Any interview or questioning should not be prolonged without reasonable rest periods and the opportunity for meals and such other personal necessities as are reasonably required.
 - d. A department employee shall not be improperly harassed or threatened during this period of questioning.
8. DOUBLE JEOPARDY: No double jeopardy exists when a department employee is found not guilty in court of criminal charges and is then found guilty of departmental charges after a disciplinary hearing, as the department charges are administrative in nature and can be

sustained by a "preponderance of the evidence" rather than the criminal court standard of "beyond a reasonable doubt."

9. INVESTIGATIVE TECHNIQUES

a. Generally

- 1) In conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods should be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused employee.
- 2) An internal administrative investigation should be conducted with the same degree of professional competence as is devoted to a criminal investigation.

b. Medical or Laboratory Examinations [52.2.6a]

- 1) Upon orders of the Chief of Police or his/her designee, an employee may be required to submit to a medical or laboratory examination, at the department's expense. This examination must be specifically directed and narrowly related to a particular internal affairs investigation being conducted by the department.
- 2) Drug or Alcohol Testing: Police employees may be compelled to submit to alcohol testing in connection with an administrative investigation based upon reasonable suspicion.⁶

c. Identification

- 1) A police department employee may be required to be photographed. [52.2.6(b)]
- 2) A police department employee may be compelled to stand in a lineup for identification in connection with an administrative investigation. Such a lineup should be fairly constructed and not be unfairly suggestive and should not be used for an administrative investigation where criminal charges are contemplated. [52.2.6(c)]
- 3) A refusal can be the basis for an additional disciplinary charge of refusal to obey a lawful order.

d. Searches

- 1) A police officer's personal property, including his/her home, car and other property, is protected from unreasonable search and seizure under the Massachusetts Constitution, and it is possible that any evidence illegally obtained may not be used as evidence in an administrative proceeding.⁷
- 2) Department property furnished to the officer, such as desks, lockers, or vehicles, in which it is clearly understood in advance

that an officer has "no expectation of privacy," may be searched without a warrant.

- e. Financial Disclosure; A police officer may be compelled to submit a financial disclosure statement as part of an internal affairs investigation provided such statement is material to the investigation being conducted.⁸ [52.2.6(d)]
- f. Polygraph: Under the provisions of G.L. c. 149, s.19B, police officers may be required to submit to a polygraph or lie detector test in connection with an internal administrative investigation if such test is conducted by a law enforcement agency in the course of a departmental investigation of criminal activity, and under such circumstances, officers may face disciplinary action for refusal.⁹ [52.2.6(e)]
- g. Recording Interviews: If possible, the complete interview with an employee in all internal administrative investigations should be recorded mechanically or by a qualified stenographer.

F. Withdrawn Complaints

- 1. If during the progress of an internal investigation, the complainant indicates a desire to withdraw the complaint, every effort should be made to ensure that this decision is made voluntarily, and a signed statement to this effect should be obtained from the complainant.
- 2. Even though a complaint is withdrawn, a full report of the investigation to date should be prepared for the Chief, and his/her approval obtained for the termination or continuation of the investigation.
- 3. Any attempt, directly or indirectly, on the part of a department employee to obstruct any internal investigation or to threaten or persuade any complainant to withdraw or abandon his/her complaint is prohibited and will be treated most severely.

G. Report of Investigation

- 1. REPORT: At the conclusion of any administrative investigation, a full written report shall be prepared for submission to the Chief or by the Chief, which shall include the following:
 - a. The original complaint report;
 - b. Any additional statements taken from the complainant or statements obtained from witnesses;
 - c. Any statements made or reports submitted by the department employee under investigation;
 - d. A summary of all evidence gathered;

- e. Any mitigating circumstances; and
- f. An evaluation of the complaint, a conclusion of facts, and a definitive statement as to whether the charges made by the complainant were: [52.2.8]
 - 1) SUSTAINED: The complaint was valid and supported by sufficient evidence;
 - 2) NOT SUSTAINED: There was inadequate or insufficient evidence to either prove or disprove the complaint;
 - 3) UNFOUNDED: The allegations were baseless and without foundation; or
 - 4) EXONERATED: The complaint was unjustified or unwarranted, as the actions of the accused department employee were in compliance with law or in accordance with department policy and procedure.

2. DUTIES OF CHIEF

- a. Upon receipt of the report of an investigation, the Chief should take further action as is necessary based upon findings in the particular case.
- b. The subject of the investigation shall be promptly notified of the final results of the investigation. If the department employee is cleared of the charges made, [s]he shall be officially exonerated in writing.
- c. The complainant shall be notified promptly as to the final results of the investigation, personally if possible or otherwise by mail. [52.2.4(c)]
- d. If a disciplinary hearing is deemed necessary, the complainant shall be notified that his/her testimony will be required at that time.

3. CONFIDENTIALITY OF INTERNAL AFFAIRS

- a. In order to ensure that the individual rights of officers who are the subject of an Internal Affairs investigation are protected all materials relevant to that investigation shall be kept strictly confidential and secured by the Chief of Police. [52.1.2]
- b. Internal Affairs investigators should note in their reports any instances where witnesses refused or were reluctant to speak with them unless they were assured that their statements would be kept confidential, at least to the extent legally allowed.
- c. No statement regarding an Internal Affairs investigation will be made or issued to the public or media unless the charges have

been sustained and action has been taken or initiated against the officer or employee.

4. INVESTIGATION SUMMARY: A copy of the completed investigation summary should be kept in a summary file as directed by the Chief of Police and will be the only source of public information about citizen complaints, other than the statistical log which may be prepared and published annually by the Chief of Police.

H. Liaison with District Attorney

1. Any Internal Affairs investigation which may, or does, result in criminal charges being brought against an officer shall require the District Attorney's or Attorney General's office to be apprised of the case for the purpose of advising on legal issues and ultimate prosecution, if necessary.
2. Contact shall be made through the Chief of Police.

¹ *Uniformed Sanitationmen's Ass'n, Inc. v. Comm. of Sanitation of New York*, 392 U.S. 280, 88 S.Ct. 1917(1969); *Gardner v. Broderick*, 392 U.S. 273, 88 S.Ct. 1913 (1968).

² *Carney v. Springfield*, 403 Mass. 604, 532 N.E.2d 631 (1988).

³ *Carney v. Springfield*, 403 Mass. 604, 532 N.E.2d 631 (1988).

⁴ *Carney v. Springfield*, 403 Mass. 604, 532 N.E.2d 631 (1988).

⁵ *NLRB v. Weingarten*, 420 U.S. 251, 95 S.Ct. 959 (1975).

⁶ *Johnson v. Dept. of Police*, 615 So.2d 1064 (La. App. 1993)

⁷ *Board of Selectmen of Framingham v. Municipal Ct. of City of Boston*, 373 Mass. 783, 369 N.E.2d 1145 (1977).

⁸ *O'Brien v. Mun. Court*, 10 Mass. App. Ct. 851, 407 N.E.2d 1297 (1980).

⁹ M.G.L. c. 149, §19B.