



Somerville Police Department 	TYPE: GENERAL ORDER		POLICY NUMBER: 204		
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Purpose

A relationship of trust between the employees of the Somerville Police Department and the citizens of the community is essential. All police employees are expected to conduct themselves in a manner as to reflect favorably on themselves and the department.

To a large degree, the public image of the 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 to protect the public, the employee and the department. In addition, internal affairs investigations can be used to correct and identify department wide training issues as well as the training, discipline, or removal of unfit personnel.

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

Policy

It is the policy of the Somerville Police Department to

Investigate all complaints, including anonymous complaints, against the department, or employees of the department, regardless of the source of the complaint, through the use of a regulated, fair, and impartial process. [52.1.1]

Procedure

1. Complaint Report Form:

- A. A standard complaint report form available from the Shift Commander or on the department's website shall be used to record all complaints of misconduct, including but not limited to, mistreatment, or unethical practices by police department personnel, whether registered by a citizen, initiated from within the police department, or forwarded by another governmental agency. [52.1.4]
- B. 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 Office of Professional Standards and securely kept in the Office of Professional Standards.
- C. The following information shall be included on the complaint report form:
 1. Date and time of complaint.
 2. Name, address, and telephone number of the complainant, unless complainant has chosen to not provide such information;
 3. Name, address, and telephone numbers of any witnesses to the 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.
 7. Signature of complainant, unless complainant chooses not to sign.
 8. Signature of parent or guardian if complainant is under eighteen, unless they choose not to sign.
 9. Name, rank, and signature of department supervisor receiving the complaint.

2. Receiving and Recording Complaints:

A. General Procedures:

1. The Shift Commander or Lieutenant in charge of Professional Standards, if he/she is available at the time the complaint is made, shall be responsible for the efficient receiving and complete recording of any complaint received. All complaints, regardless of how they are received, shall be documented on a [complaint report form](#), and forwarded to the Office of Professional Standards.
2. The utmost courtesy and cooperation should be extended to all people registering complaints or otherwise inquiring about the complaint procedure.
3. If the substance of the employee misconduct warrants it, the Shift Commander or the employees immediate supervisor may relieve the employee (sworn or non-sworn)

from duty (with pay) for the remainder of employee's shift pending notification of the Professional Standards Lieutenant and the Chief of Police or his/her designee. The employee (sworn or non-sworn) shall only be relieved from duty otherwise at the direction of the Chief of Police or his/her designee. [52.2.7]

B. In-Person Station Complaints:

1. When a person comes to the Somerville Police Department, indicating a desire to make a complaint concerning a Department employee, that person shall be directed to the nearest available superior officer. The officer recording the complaint shall then complete a complaint report form, after obtaining as much information as possible from the complainant.
2. Citizens making complaints in-person should be requested to review the completed report, to make any necessary corrections or additions, and to sign the completed report.
3. If a complainant chooses to not sign a complaint report form, a notation to that effect should be made on the form.
4. The completed standard complaint report form shall be forwarded to the Office of Professional Standards.

C. Telephone Complaints:

1. All telephone complaints should be transferred to a superior officer if immediately available, who will obtain as much information as possible and complete a complaint report form.
2. People making complaints by telephone should be informed that a signed form is requested; however, no telephone complaint should be rejected because the complainant does not want to sign a complaint form or because he/she does not want to be identified.
3. The completed standard complaint report form shall be forwarded to the Office of Professional Standards.

D. Complaints Received by Mail/Electronic Mail:

1. If a complaint of misconduct by a department employee is received by mail or e-mail, the allegations shall be incorporated in a standard complaint report form and the original communication attached and the completed documentation shall be forwarded to the Office of Professional Standards.
2. If the information received is insufficient or incomplete, the complainant shall be contacted, if possible, and informed of the department complaint procedure and any necessary additional information.

E. Complaints by Prisoners:

1. Any prisoner who alleges misconduct by a department employee shall be advised by the Shift Commander of his/her right to submit a complaint report form and all complaints shall be investigated in the same manner as every other citizen complaints.

F. Complaints from Governmental Agencies:

1. When information is received from other governmental agencies alleging specific acts of misconduct against a department employee, this information shall be recorded by completing and filing a report (pursuant to section 1 of this policy) and an investigation initiated.

G. Street Complaints:

1. If an officer is approached by a person regarding a complaint of alleged misconduct against an employee of the department, the officer shall inform the person that his/her complaint should be directed to the Shift Commander or to the Office of Professional Standards.

H. Verification of Receipt:

1. When a complaint is made in-person, the officer 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. [52.2.4(a)]
2. When a complaint is received by telephone, mail, or via email, the Office of Professional Standards shall be responsible to ensure that the complainant is sent a copy of his/her complaint to serve as a written verification that the complaint has been received, to the extent such contact information has been provided by the Complainant. [52.2.4(a)]

I. Periodic Status Reports:

1. In all cases of reporting, except anonymous reports, the complaining party shall periodically receive information regarding the status of the investigation. [52.2.4(b)]

3. Investigative Procedures:

A. Categories of Complaints:

1. The department has established guidelines regarding which categories of complaints will be handled and investigated by the Office of Professional Standards and which will be handled by a shift supervisor as part of his/her responsibilities.
2. The criteria for determining the categories of complaints to be investigated by the Office of Professional Standards 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
 - f) Any other matter as directed by the Chief
3. Criteria for the assignment of an investigation to a Shift Supervisor, may include, but are not limited to the following offenses: [52.2.1(a)]
- a) Alleged rudeness
 - b) Tardiness
 - c) Minor cases of insubordination
4. All reports of investigations performed by Shift Supervisors shall be forwarded to and reviewed by the Office of Professional Standards.

4. Immediate Resolution of a Complaint:

- A. In some cases, a complaint of employee misconduct can be resolved to the complainant's satisfaction at the time the complaint is made.
- B. This immediate resolution can often be accomplished if the incident is 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.
- C. Such complaints of employee misconduct shall be recorded on a complaint control form, with a notation the complaint was resolved, signed by the complainant if complainant is willing to do so, and then forwarded to the Office of Professional Standards.

5. Investigation of Complaints:

- A. The Lieutenant in the Office of Professional Standards shall be responsible for conducting investigations involving an employee or the department. He/she shall report to the Support Services Deputy Chief of Police who oversees the Office of Professional Standards. The Support Services Deputy Chief of Police shall report directly to the Chief of Police. [52.1.3]
1. When employees are notified that they have become the subject of an internal affairs investigation (s), the agency will issue the employee a written statement of the allegations and the employee's rights and responsibilities relative to the investigation. [52.2.5]

2. The Office of Professional Standards shall be responsible for providing the Support Services Deputy 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.
 3. If the substance of a complaint, against the Department or an employee, if proven, would be of grave nature, or is an accusation of a serious crime and immediate action is deemed necessary, the Chief, or his/her designee, shall be immediately notified by telephone so that an investigation can be initiated without delay. The notification shall be made by the Support Services Deputy Chief of Police [52.2.2]
 4. Before a department employee is questioned or directed to submit a report regarding a complaint, unless the Chief determines that disclosure might jeopardize the investigation, the employee shall be issued a written statement of the allegations and the employee will be advised of all of his/her applicable rights under (Miranda, Carney, Appeal, Weingarten, 5th amendment, Article 12) rights under State and Federal Statute and responsibilities relative to the investigation. [52.2.5]
- B.** Any Professional Standards investigation must be commenced immediately upon receipt of the complaint and must be completed within thirty (30) days. [52.2.3]
1. If extenuating circumstances preclude completion within thirty (30) days, the Office of Professional Standards shall request an extension from the Chief in writing and provide written notification to the employee (if previously notified of the complaint and investigation) and the complainant of the delay.
 2. If the investigation is not completed within thirty (30) days, the complainant and the subject of investigation shall be provided a progress report every thirty days (30) until the completion of the investigation.
- C.** An internal administrative investigation may inquire into a department employee's on-duty or off-duty conduct if the inquiry is reasonably and directly related to the employee's performance of duty, if the conduct affects the employee's fitness or ability to continue in the police service, or discredits the department.
- D.** Criminal Proceedings: If an allegation could potentially lead to a criminal charge against a department employee then the accused employee must be granted all applicable constitutional and statutory rights.
1. Before being questioned regarding alleged personal involvement in criminal activity, a department employee shall be given Miranda warnings, including the right to have an attorney present during any questioning before custodial interrogation.
 2. After Miranda warnings have been given, any voluntary statement made may be admissible in a criminal proceeding, and may otherwise be used for departmental disciplinary purposes.
 3. 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. However, an employee may be compelled to answer questions narrowly drawn and related to the employee's on or off-duty conduct, and may be disciplined, including discharge, for failure to answer truthfully.

- E. Departmental Disciplinary Action:** 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, objective, and lawful investigation and resolution of the charges.
1. All department employees, when requested by the Chief, or by his/her designee, must respond fully and truthfully to all questions regarding the performance of official duties or on-duty or off-duty misconduct which reflects poorly on the city and the department, and shall answer completely and truthfully to inquiries and be subject to punishment by appropriate disciplinary action, including dismissal from the department for any failure to do so.
 - a) The officer conducting the interrogation must, at the time of the interrogation specify and notify the subject of the precise repercussions (i.e., suspension, discharge, or the exact form of discipline) that will result if the officer fails to respond.
 2. 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 is entitled to and shall 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/her employment. Transactional immunity grants immunity from prosecution for offenses for which testimony is compelled. Transactional immunity can only be granted by the D.A's office for every County in the State of Massachusetts and the Attorney General's Office.
 3. If the questions specifically, directly, and narrowly relate to the employee's performance of official duties, or the employee's off-duty conduct, which affects his/her fitness or ability to remain in the police service, and if the employee receives a statewide grant of transactional immunity from criminal prosecution, he/she must answer, or face disciplinary action, including dismissal from the department, for refusing to answer these questions.
 4. The Chief, or his/her designee, shall secure a written grant of transactional immunity from the District Attorney's Office and or Attorney General's Office, if applicable,

- and in the case of a Federal offense, the U.S Attorney general's Office. An employee may decline to answer questions in a criminal investigation until documentation is received and the employee has been afforded a reasonable opportunity to have it reviewed by counsel.
- F. 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, because 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.
- G. In conducting internal administrative investigations,** there is no legal obligation for the department to provide employees with an opportunity to consult with an attorney before being questioned on work-related matters; however, a request for an attorney, or an employee representative to be present, will be granted if the investigation is not unduly delayed.
1. Except in unusual situations, any interview or questioning should take place during the employee's regular duty hours.
 2. Any interview should not be prolonged without reasonable rest periods and the opportunity for meals and other personal necessities as are reasonably required.
 3. A department employee shall not be improperly treated or threatened during this period of questioning.
 4. Interviews must be recorded, including pre-interview discussions. The department should provide the officer with a copy of the recording. Also, the union shall be allowed to record the interview.
- H. In conducting investigations of alleged employee misconduct,** all appropriate investigative techniques and methods may be employed, consistent with legal requirements and obligations, including but not limited to CBA protections, and all necessary respect for the individual rights of the accused employee.
1. An internal administrative investigation should be conducted with the same degree of professional competence as is devoted to a criminal investigation.
 2. Upon specific orders from the Chief of Police, or his/her designee, and only after consultation with the Chief of Police, an employee may be required to submit to a medical or laboratory examination pursuant to current SPSOA and SPEA collective bargaining agreements, and state and federal statute and at the department's expense. This examination must be specifically directed and narrowly focused to a particular Professional Standards investigation being conducted by the department. [52.2.6(a)]
- I. Identification:** A police officer may also be required to be photographed and can be compelled to stand in a lineup for identification in connection with an administrative investigation, and a refusal can be the basis for an additional disciplinary charge of

refusal to obey a lawful order. Any lineup should be fairly constructed and not be unfairly suggestive and should not be used for an administrative investigation where criminal charges are contemplated. Somerville Police employees shall not be used as fillers in a line-up. [52.2.6(b)(c)]

- J.** Searches: A police officer's personal property, including his/her home, car, and other property, is protected from unreasonable search and seizure under the constitution, and it is possible that any evidence illegally obtained may be barred as evidence in a criminal or administrative proceeding. Department property furnished to an officer, like desks, lockers, cell phones, cameras and any other electronic devices or vehicles, in which it is clearly understood in advance that an officer has no expectation of privacy, may be searched without a warrant.
- K.** Financial Disclosure: A police officer may be compelled, subject to a warrant or subpoena to submit a financial disclosure statement as part of a Professional Standards investigation provided the statement is narrowly focused and material to the investigation being conducted to an alleged violation within the scope of the officer's employment. [52.2.6(d)]
- L.** Under the provisions of M.G.L. Chapter 149, Sec. 19B, police officers may be required to submit to a polygraph and an officer may face disciplinary action for refusal. [52.2.6(e)]
- M.** Recording Interviews: If appropriate, the complete interview with an employee in all internal administrative investigations should be recorded in compliance with collective bargaining agreements. A department employee shall not be improperly treated or threatened during this process.
- N.** Withdrawn Complaints: If during the progress of an internal investigation, the complainant indicates a desire to withdraw the complaint, efforts should be made to ensure that this decision is made voluntarily, and a signed statement to this effect should be obtained from the complainant.
 - 1.** Even though a complaint is withdrawn, a full-report of the investigation should be prepared for the Chief and his/her approval obtained for the suspension or termination of the investigation.
 - 2.** 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 shall result in disciplinary action.

6. Report of Investigation:

- A.** As soon as practical, though not at the expense of a thorough investigation, the investigating officer shall bring the investigation to a close and prepare an investigative report. . The report shall provide, but not be limited to, a summary of all evidence gathered and reviewed during the course of the investigation, a summary of witness interviews, and contain the investigating officers recommended findings. The report shall include the following:

1. The original standard complaint control form;
 2. Any additional statements taken from the complainant or statements obtained from witnesses;
 3. Any statements made or reports submitted by the department employee under investigation;
 4. A summary of all evidence gathered;
 5. Any mitigating circumstances;
 6. An evaluation of the complaint, a conclusion of facts, and a definitive statement as to whether the charges made by the complainant should be: [52.2.8]
 - a) **Sustained:** The complaint was valid and supported by sufficient evidence;
 - b) **Not Sustained:** There was inadequate or insufficient evidence to either prove or disprove the allegations;
 - c) **Unfounded:** The allegations were without foundation; or
 - d) **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.
 - e) **No Finding:** The investigation cannot proceed, because the complainant failed to disclose promised information to further the investigation, the complainant wishes to withdraw the complaint, or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the employee involved.
 - f) **Mediation:** By mutual agreement with all involved parties the case was mediated by a designee of the Chief of Police and the complaint withdrawn.
 - g) **Complaint Withdrawn:** The complainant affirmatively indicates the desire to withdraw his/her complaint.
- B.** Upon receipt of the report of investigation, the Chief should take further action as is necessary based upon findings in the particular case.
- C.** An investigation is not complete/ “closed” until the Chief approves the recommended findings of the investigation.
- D.** In all cases, the subject of the investigation shall be promptly notified (in writing) of the final results of the investigation. If the department employee is cleared of the charges made, the employee shall be exonerated in writing.

E. Every person who has filed a complaint against an employee shall be promptly notified as to the final results of the investigation, personally—if possible—or otherwise by mail. [52.2.4(c)]

1. If a disciplinary hearing is deemed necessary, the complainant shall be notified that his/her testimony will be required.

7. Confidentiality of Professional Standards:

A. In order to ensure that the individual rights of an officer are protected, all materials relevant to a complaint investigation, whether against an individual employee or the Department, shall be maintained and kept confidential in accordance with applicable laws.

These records shall be maintained in a secure location within the Office of Professional Standards. [52.1.2]

- B. A complete file of records on the investigation of all citizen and internal complaints against the agency, and/or the employees, shall be kept in the Office of Professional Standards. These files shall contain supporting investigative information, as well as notes taken during the investigation. These files shall be treated as confidential investigative files and kept in a locked cabinet secure area with limited access. [26.1.8]
- C. Professional Standards investigators should note in their reports any instances where a witness refused or was reluctant to speak.
- D. No statement regarding an investigation will be made by a P.I.O. to the public, or media, unless the charges have been sustained and action has been taken against the employee.
- E. Materials related to all Professional Standards Investigations are subject to the applicable Public Records Laws, may be subject to subpoena, as well as disclosure as a result of litigation.

8. Liaison with District Attorney

A. Any Professional Standards investigation which may, or does, result in criminal charges being brought against an officer shall require the District Attorney's, Attorney General's office, or U.S. Attorney's Office to be apprised of the case for the purpose of advising on legal issues and ultimate prosecution, if necessary. Contact shall be made through the Office of Professional Standards.

9. Employee Protections

A. Nothing in this policy should be deemed to supersede employee and union protections under collective bargaining agreements, state and federal statutory law, constitutional law, and state and federal employee rights and or management rights.