



TIVERTON POLICE DEPARTMENT

SUBJECT: Internal Affairs Procedures	GENERAL ORDER NO. 230.10
	PAGES: 18 (Attachments)
SECTION: 200- Administration SUBSECTION: 30- Internal Operations	AMENDS/SUPERSEDES: 1-4
PER ORDER OF: <i>Thomas Blakey</i> Thomas Blakey, Chief of Police	EFFECTIVE DATE:
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NOTE: This written directive is for the internal governance of the Tiverton Police Department, and is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

INDEX WORDS: Complaint; internal investigations; medical/laboratory examinations of employees; lineups; photographs of employees; financial disclosure statements; polygraph; due process; board of inquiry, criminal misconduct

I. POLICY:

The image of the Tiverton Police Department depends on the personal integrity and discipline of all departmental employees. To a large degree, the public image of a police department is determined by the professional response of the department to allegations of misconduct against it or its employees. The department must competently and professionally investigate all allegations of misfeasance, malfeasance, nonfeasance by employees, and complaints bearing on the department's response to community needs.

II. PURPOSE:

To describe procedures for making misconduct complaints against department personnel, for investigating complaints, and to list and define the dispositions of complaints.

III. DEFINITIONS:

- A. Internal Investigation: An administrative inquiry into the facts and circumstances surrounding a complaint.

- B. Interview: A meeting with an accused employee or witness to gather information and facts.
- C. Misconduct: A violation of or failure to comply with Department Rules and Regulations, General or Special Orders, or other directives.
- D. Personnel Complaint: Any allegation or complaint received by any officer, directly or indirectly, that accuses any employee of improper or illegal conduct occurring on- or off-duty.
- E. Polygraph Examinations: An examination using an apparatus designed for the detection of deception by measuring and recording changes in a person's respiration and heart activity.
- F. Probationary Period/Status: A period of conditional employment imposed during the officer's first eighteen (18) months of service.
- G. Rules and Regulations: A set of specific guidelines to which all employees must adhere.

IV. DISCIPLINARY ACTION:

- A. Discipline is a method of deterring misconduct and is intended to encourage compliance with Department Rules and Regulations, General and Special Orders, other directives, established law, and proper police conduct.
- B. Discipline provides sanctions for proven misconduct and protection from false accusations; therefore, discipline must be based on a formal, written foundation.
- C. The Captain shall oversee the Department's Internal Affairs operations.
- D. An Internal Affairs Investigator shall be assigned to investigate incidents which may result in formal disciplinary actions only.
 - 1. An Internal Affairs Investigator shall hold the rank of Lieutenant or above.
- E. Incidents which may result in informal disciplinary action may be investigated by an officer of the rank of Sergeant or higher and forwarded to the Captain for disposition.
- F. No disciplinary action may be imposed that infringes on any collective bargaining agreement or the Rhode Island Law Enforcement Officers' Bill of Rights, unless the member agrees to and signs a waiver allowing such action to be taken.
- G. All information obtained during the investigation of a personnel complaint is *confidential*. Therefore, it is imperative that all documents pertaining to personnel complaints be properly secured to protect all parties involved. All officers exercising control over documents and files pertaining to a personnel complaint

must ensure those documents are kept under lock and key. When transferring these documents from one officer to another, sealed envelopes shall be used and marked *confidential*. Officers may use evidence seals to seal the envelopes. Officers shall write their initials over the seal.

- H. Disciplinary action imposed as a result of an internal affairs investigation must be conducted in accordance with Tiverton Police Department Rules and Regulations, this policy, the Rhode Island Law Enforcement Officers' Bill of Rights (as set forth in Rhode Island General Laws Title 42, Chapter 28.6.), and existing collective bargaining agreements.
- I. Upon the completion of an investigation and hearing conducted in accordance with the Rhode Island Law Enforcement Officers' Bill of Rights, which results in dismissal from the Department, the Chief will provide, in writing, the following information to the employee: the effective date of dismissal, reason(s) for the dismissal, a statement as to the content of the employee's employment record relating to the dismissal, and the status of all benefits after dismissal.

V. PROCEDURES - GENERAL:

- A. The department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Department members shall receive complaints courteously and shall handle them efficiently. All officers are obligated to explain to inquiring citizens the complaint procedures. All complaints against the agency or its employees shall be investigated to include anonymous complaints.
- B. The department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. They must strive to remain neutral under circumstances likely to generate tension, excitement and emotion. In such situations, words, actions, and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of the more serious allegations and underlying circumstances, so that complaints can be resolved in light of the complicated pressures of police work.
- C. A copy of "*How to Make a Complaint against Police Personnel*" (Attachment A) may be given to any citizen requesting information on how to make a complaint against the department or an employee of the department.
- D. Information concerning the procedures to register a complaint against the agency or its employees is available to the public on the Police Department's website, the forms area in the Uniform Division, on the Department computer system ("M" drive) and posted in the lobby.
- E. Complaints regarding law enforcement operations will be handled through the chain of command. Complaints involving how police service is provided, a failure to provide service, or improper attitudes or behavior will normally be

investigated and handled by the Officer in Charge (OIC) or a Unit Commander (Lieutenant).

- F. When deemed advisable, the Chief of Police may ask an investigator from another agency or the Rhode Island State Police to undertake the investigation.

VI. RECEIPT OF COMPLAINTS:

- A. Complaints, regardless of nature, may be lodged in person, by mail, or by phone at any time. The Officer in Charge (OIC), a Unit Supervisor, or a Unit Commander will normally interview persons making complaints. The OIC, Supervisor, or Commander will provide information and guidance to the complainant. Reluctance or refusal of the reporting party to give a written statement shall not necessarily end an investigation and anonymous complaints will be followed up to the extent possible.
- B. Every reasonable effort shall be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints. An employee, who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action.

VII. OFFICER'S/CLERK'S/DISPATCHER'S RESPONSIBILITIES:

- A. An employee of the department who initially receives a personnel complaint shall promptly notify the Officer in Charge (OIC).
- B. If the OIC cannot be immediately contacted the employee shall record the name of the complainant and the best method to contact the complainant.
- C. If the nature of the complaint requires immediate attention and the Officer in Charge cannot be reached, the Captain shall be notified.

VIII. SUPERVISOR'S RESPONSIBILITIES:

- A. Formal Investigations:
 - 1. The Officer in Charge (OIC) shall promptly notify their Unit Commander and the Commander shall notify the Captain.
 - 2. The complainant shall complete the "*Report of Complaint against Police Personnel*" (Attachment B). The OIC, Supervisor, or Commander shall assist the complainant. The following information shall be included but not limited in the report:
 - a. Date and time of complaint, complainant's name, home address and telephone number
 - b. Name, home address, and telephone number of any witness

- c. Rank, name, and badge number of the employee(s) named in the complaint, (if known)
 - d. Location, date and time of the complaint
 3. The OIC shall forward the “*Report of Complaint against Police Personnel*” and all relevant information, evidence and reports to their Commander who will then forward it to the Captain.
 4. The Complainant may choose to complete the report at home. The Complainant shall be directed to mail the report to the Captain.
- B. Informal Investigations:
 1. Supervisors holding the rank of Sergeant and above are authorized to investigate minor infractions such as tardiness, rudeness, improper appearance, first time category I offenses.
 2. Investigations of minor infractions shall be documented and reviewed with the employee. The supervisor conducting the investigation shall forward a report, through the Chain of Command, to the Captain.

IX. CAPTAIN’S RESPONSIBILITIES:

- A. Oversee the Department’s internal affairs operations.
- B. Assign internal affairs investigations.
- C. Conduct internal affairs investigations as directed by the Chief of Police.
- D. Brief the Chief of Police of all complaints against the agency or its employees and of the status of all investigations.
- E. Provide recommendations of final dispositions and punishments for all investigations to the Chief of Police.
- F. Review all formal investigations and determine the validity and merits of the complaint and the ability to achieve a resolution and acceptable disposition.
- G. Notify the complainant in writing as soon as practicable that the department acknowledges receipt of the complaint and that the complaint is under investigation.
- H. Provide the Complainant with periodic status reports on the investigation.
- I. Notify the complainant of the results of the investigation upon conclusion.

- J. Compile annual statistical summaries based upon records of internal affairs investigations.

X. CHIEF OF POLICE:

- C. Maintain complaint files separate from personnel files.
 - 1. All internal affairs investigative reports shall be maintained as confidential records.
 - 2. Take appropriate disciplinary action following the investigation and notify the complainant of the conclusions reached.
 - 3. Maintain close liaison with the Town Solicitor and/or Attorney General where there are allegations of alleged criminal conduct. Where liability is at issue, the Chief shall also initiate contact with the Town Administrator, Risk Manager and Town Solicitor as necessary.

XI. FINAL REPORTS:

- A. All Internal Affairs Investigations shall be assigned a reference number (i.e. Internal Investigation 2014-001).
- B. Internal Affairs Investigators will submit a final report to the Captain, upon completion of the internal investigation. An "*Internal Affairs Investigation Final Report*" Cover Sheet (TPD 14-029) will be completed for all internal investigations.
- C. The final report shall include all personnel statements, witness statements, or other evidence gathered during the investigation.
- D. The final report shall include a determination of whether the complaint was substantiated or unsubstantiated.
 - 1. If it is determined that the complaint cannot be proved or refuted, such complaint shall be classified as unsubstantiated;
 - 2. If it is determined that the complaint has been substantiated, the officer shall be disciplined. The officer shall retain the right to have the matter settled through the grievance procedure or at a Rhode Island Law Enforcement Officers' Bill of Rights Hearing, depending on the severity of the penalty imposed.
- E. If further evidence is brought forth after the submission of a final report, the investigating officer shall submit a supplemental report to the Captain.

XII. PROCEDURES - INVESTIGATIVE:

Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case. When an employee is under investigation, unless in the judgment of the Chief or Captain the investigation would be jeopardized by notifying the employee, the employee shall be notified in writing that the investigation is taking place, and notified of the allegations in the complaint and of the employee's rights and responsibilities concerning the investigation.

A. Administrative Investigation

If the Chief wishes to compel an employee to answer questions directly related to his or her official duties and the Chief is willing to forego the use of such answers in a criminal prosecution, the Chief of Police or another interviewer shall advise the employee that:

1. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in a disciplinary proceeding resulting in reprimand, demotion, suspension, or dismissal.
2. All questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action, up to and including dismissal.
3. No answers given nor any information obtained by reason of such statements shall be admissible against the employee in any criminal proceeding.
 - a. The following shall read to the employee:
"You are being questioned as part of an official investigation of the police department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You will be afforded all the rights and privileges guaranteed by the laws and the Constitution of this State and the Constitution of the United States and the Rhode Island Law Enforcement Officer's Bill of Rights, including the right not to be compelled to incriminate yourself. If you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges, which could result in your dismissal from the police department. If you do answer, neither your statements nor any information or evidence which is gained as the fruits of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent department charges."

4. In an interview for administrative purposes, no advisement of Miranda rights is required. Further, the foregoing rules are inconsistent with Miranda in that employees' statements cannot be used as criminal evidence. Because the interview does not serve criminal prosecution, the employee has no Sixth Amendment right to counsel.
 - a. The accused employee shall be provided with a completed "*Administrative Proceedings Rights Notification of Allegations*" (Attachment D) form found attached to this order.

B. Criminal Investigation

If the Chief of Police or Captain believes that criminal prosecution is a possibility, a designated departmental criminal investigator who will be prohibited from communicating about the case with any officer or investigator conducting a parallel internal investigation, or at the Chief's option an independent law enforcement agency or the Rhode Island State Police shall conduct the criminal investigation. The Chief shall inform the independent agency that they shall:

1. Give the employee Miranda rights.
2. Advise the employee that if he/she asserts 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 disciplinary proceedings.
 - b. Note that the Miranda admonition includes the provision that a lawyer may be 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.

C. Allegations against Chief or Town Administrator

Any allegations made against the Chief of Police or Town Administrator shall be investigated by an independent law enforcement agency or the Rhode Island State Police, to avoid conflicts of interest..

XIII. 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, including:

A. Medical and Laboratory Examination

1. Any employee who has knowledge of, or witnesses' evidence of unauthorized use and/or abuse of alcohol or drugs by another employee on or off-duty, shall immediately notify the Chief of Police or the next in the chain of command in the Chief's absence.
2. A test to determine Blood Alcohol Content by weight will be performed if it is believed that there has been unauthorized use of alcohol while the employee is on duty. The Chief of Police or officer in authority will witness the test and will be required to sign the report.
3. If the employee has a reading of .02 or higher, is at work with the odor of alcohol on his/her breath, or if there is competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the Chief of Police or the ranking officer in charge at the time.
4. If the employee is believed to have used or consumed any illicit drugs or is believed to be under the influence of prescribed drugs, the employee may be compelled to submit to a blood and/or urine test. The test shall be administered under medical supervision where hygienic safeguards are met. The sample will be handled using the same safeguards as evidence in a criminal process.
 - a. If the test shows positive results, or there is competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty immediately by the Chief of Police or the ranking officer in authority at the time.
5. A Drug Recognition Expert (DRE) may be requested to perform a field evaluation of the employee and render a professional opinion as to whether or not the employee has consumed illegal drugs or is impaired by the use of legal or illegal drugs.
6. If an employee refuses to submit to a test, (alcohol or drugs) then the Chief of Police or other ranking officer in authority shall immediately relieve the employee from duty for failure to cooperate in an administrative investigation.

B. Photographic Identification Procedures

1. A photo identification book of department employees shall be maintained for the purpose of identification by citizens of an employee accused of misconduct. Photographs of employees for the identification book if required by the department shall only be used as they narrowly relate to the employee's job.

2. Photographs or videotape pictures of employees, whether knowingly or surreptitiously to the employee, may be taken for the purpose of internal investigations, and only when it relates to the employee's job and the employee is suspected of misconduct.

C. Financial Disclosure Statements

An employee may be compelled to make financial disclosure statements only when they are directly and narrowly related to allegations of misconduct involving any unlawful financial gain and necessary to investigate a possible conflict of interest, or are otherwise required by law. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding, and shall be returned to the employee or destroyed if the complaint is not sustained.

D. Polygraph Examinations

The use of polygraph examinations as a condition of employment or continued employment is expressly prohibited by Section 28-6.1-1 of the Rhode Island General Laws.

XIV. ADJUDICATION OF COMPLAINTS:

- A. The officer assigned to an internal affairs investigation shall make a recommendation to the Captain and the Chief of Police regarding the classification of the investigation. This recommendation shall be documented in the "*Internal Affairs Investigation Final Report*" Cover Sheet (TPD 14-029). The Chief of Police shall make a final classification of all completed internal affairs investigations as:
1. **Unfounded** - no truth to the allegations.
 2. **Exonerated** - allegations true, but were the result of adherence to proper and appropriate police procedures and techniques.
 3. **Unsubstantiated** - unable to verify the truth of the matters under investigation.
 4. **Substantiated** - the allegations were true, and a violation has occurred.
 5. Completed investigations classified as unfounded, exonerated or not sustained shall be maintained in internal affairs files in the Chief's office. The findings of sustained complaints and actions taken will be filed in the individual employee's department personnel file with a copy in the internal affairs files.
 6. The final report on the investigation shall include a conclusion of fact for each separate allegation in the complaint.

- B. Disciplinary records maintained in confidential files

Disciplinary records shall be marked as internal affairs records and kept in a confidential file, separate from other personnel records. Disciplinary records shall be purged only with approval of the Chief of Police. Category I offenses shall expire as grounds for dismissal after two years following the incident, if no further offenses in any category have occurred. Category II offense records shall expire as grounds for dismissal after three years following the incident. Category III offenses can be used to show a pattern of misconduct in the event of future offenses at any time.

- C. Disciplinary action taken shall be determined by the seriousness of the violation

Disciplinary action shall be commensurate with the circumstances surrounding the incident and in consideration of the officer's service record and prior sustained complaints. See the General Order 210.70 "*Employee Discipline*".

XV. DUE PROCESS:

- A. The policy of the department is to provide due process, including full compliance with any applicable provisions of the Rhode Island Law Enforcement Officers' Bill of Rights, in any administrative proceedings that might result in suspension or dismissal.
- B. The department intends to observe due process of law in the spirit of the 14th Amendment in any disciplinary proceeding. Nevertheless, the foregoing rules circumscribe when legal counsel may or may not be used during interviews of employees suspected of misconduct.
- C. The fact that an employee has held a job for years does not entitle him or her to keep it.
- D. The department recognizes that an employee, though dismissed or suspended, may have a liberty interest to enjoy future employment elsewhere and, if suspended or dismissed, should have an opportunity to set forth his or her point of view for name-clearing purposes. This opportunity is afforded to sworn officers under the Rhode Island Law Enforcement Officers' Bill of Rights.

VII. ATTACHMENTS:

- A. "*How to Make a Complaint against police personnel*" Directions (TPD 13-045)
- B. "*Report of Complaint against Police Personnel*" Form (TPD 13-044)
- C. "*Internal Affairs Investigation Final Report*" Cover Sheet (TPD 14-029)
- D. "*Administrative Proceedings Rights Notification of Allegations*" form (TPD 13-051)

TIVERTON POLICE DEPARTMENT

How to make a Complaint Against Police Personnel



1. If you wish to make a complaint about the actions of a Tiverton Police Department Employee or about any aspect of Tiverton Police operations, please:
 - Go to Police Headquarters, 20 Industrial Way, Tiverton RI 02878, and tell any employee that you wish to make a complaint; or
 - Call the department at 401-625-6716 and tell the person answering the phone that you wish to make a complaint
 - Write your complaint and mail it to the Chief of Police, Tiverton Police Department, 20 Industrial Way, Tiverton, RI 02878.
 - If your complaint involves the Chief of Police, you may contact the Town Administrator at the Town Hall, 343 Highland Rd., Tiverton RI 02878 (TEL: 401-625-6710)
2. Every reasonable effort shall be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints.
3. An officer will assist you in filling out a complaint form. This form asks you to identify yourself and then to give specific details about your complaint.
4. Your complaint will then be investigated. You may be contacted and asked additional questions about your complaint.
5. All witnesses and involved police officers/employees will be interviewed concerning the incident.
6. You will be notified in writing as soon as practicable that the department acknowledges receipt of the complaint and that the complaint is under investigation.
7. You will receive periodic status reports on the investigation.
8. You will be contacted by the Chief of Police, or the Chief's designee, when the investigation is completed.

If you have questions concerning the process, you may contact the Patrol Shift Officer in Charge (OIC) at (401) 625-6717 ext. 0 or the Captain at (401) 625-6717 ext. 106 or the Chief of Police at (401) 625-6717 ext. 116. **Thank you for bringing this matter to our attention**