

Truro Police Department

CITIZEN COMPLAINTS AGAINST AN EMPLOYEE

Policy Number: ADM-3.03

Effective Date: November 30, 2000

REFERENCE: Collective Bargaining Agreement

Accreditation Standards: 52.1.1; 52.1.2; 52.1.3; 52.1.4; 52.1.5; 52.1.6; 52.1.7; 52.1.8; 52.1.9; 52.1.10; 82.2.2(b)

Mass. Gen. Law:

Other:

I. GENERAL CONSIDERATIONS AND GUIDELINES

A relationship of trust and confidence between the employees of this police department and the citizens of the community is essential to the successful accomplishment of law enforcement objectives. All police employees are expected to conduct themselves, whether on or off duty, in such a manner as to reflect favorably upon themselves and the department. The consistently high quality of this standard of conduct establishes and maintains the reputation of the department and encourages the support of the community for police purposes and goals.

An Internal Affairs Investigator is appointed annually by the Board of Selectmen, and shall investigate matters described herein. The Chief of Police, depending on the circumstances, may assign outside assistance in the investigation, or may assist in the investigation himself. The Terms officer in charge, shift supervisor, and shift commander shall be used simultaneously, and shall refer to the highest ranking officer, or most senior officer on duty.

The Internal Affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the department depends on the personal integrity and discipline of each employee. 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.

The primary responsibility of the Internal Affairs function is to respond to allegations of misconduct against the police department and its employees. The Internal Affairs Investigator will be responsible for recording, registering, and controlling the investigation of complaints against employees; supervising and controlling the investigation of alleged misconduct within the department. The Chief of Police will maintain the confidentiality of Internal Affairs investigations and records.

The Internal Affairs Investigator will ensure that the integrity of the department is maintained through an internal system where objectivity, fairness and justice are assured by intensive and impartial investigation and review.

The responsibility for supervising, conducting, coordinating, and maintaining the Internal Affairs function of the department lies with the Internal Affairs Investigator. All findings will be prepared in writing and presented to the Chief of Police with a recommendation for disposition.

Allegations of misconduct, even when unfounded, stigmatize the officer individually. Unfortunately vindictive individuals know this and may file frivolous complaints to get back at officers whom they dislike. This may adversely affect the officer's career, his/her family and his/her ability to function most effectively as a member of the department. The department's community policing efforts may likewise be jeopardized.

Since an Internal Affairs investigation involves allegations against a member of the department, it is essential that the process not only be lawful, but confidential as well. This necessitates strict confidentiality and full adherence to procedure.

The objectives of an Internal Affairs investigation are:

1. Protection of the public;
2. Protection of the employee;
3. Protection of the department;
4. Removal of unfit personnel; and
5. Correction of procedural 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. These include:

1. Alleged violations reported to the department's superior officers by other members of the department, either orally or in writing;
2. Alleged violations, observed or suspected, by department superior officers; and
3. Citizens' complaints of alleged police misconduct which are made in person, by letter, by telephone, or anonymously (includes prisoner complaints).

No complaint should be rejected solely because it is anonymous, as anonymous complaints can often be a valuable source of information and should be considered on their individual merits. Care must be taken, however, that department employees are not subjected to unjust, frivolous, or capricious complaints.

II. POLICY

It is the policy of the Truro Police Department to:

- A. Investigate all 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 [82.2.2(b)]**A. Complaint Procedures****1. Complaint Report Form**

- a. A standard complaint report form (enclosed) 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 form:
 - i. Date and time of complaint report;
 - ii. Name, address, and telephone number of the complainant;
 - iii. Name, address and telephone numbers of any witnesses to the reported incident;
 - iv. Name, rank, badge number (or description) of the employee against whom the complaint is made;
 - v. Date, time and location of the reported incident;
 - vi. Complainant's description of the incident which resulted in the complaint;
 - vii. Signature of complainant;
 - viii. Signature of parent or guardian if complainant is under eighteen years of age; and

- ix. Name, rank and signature of department employee receiving complaint report.

2. *Receiving and Recording Complaints*

a. *General Procedures*

- i. The Shift Commander of the station at the time the complaint is made shall be responsible for the efficient receiving and complete recording of any complaint of police employee misconduct made by a citizen in person or received by telephone.
- ii. The utmost courtesy and cooperation should be extended to all citizens registering complaints or otherwise inquiring about complaint procedure.
- iii. 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.
- iv. No person should be denied an opportunity to register a complaint, nor should any such person be directed to return or call back later.
- v. Every complaint report form shall be given an identifying number, so that the processing of complaints can be carefully monitored. This identifying number can be the incident number of the incident from which the complaint originated. If no previous incident number was assigned, one shall be issued, and a brief log entry made under general service.
- vi. If the substance of the employee misconduct warrants it, the officer in charge may place the employee on administrative leave for the remainder of his/her shift pending notification of the Internal Affairs officer and the Chief of Police. 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.
[52.1.8]

b. In Person Complaints

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

c. Telephone Complaints

- i. Citizens making complaints by telephone should be informed that their signed complaint is requested; however, no telephone complaint should 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.

d. Complaints Received by Mail

- i. If a complaint of misconduct or mistreatment by a department employee is received by mail, the allegations shall be incorporated in a standard complaint form and the original communication attached thereto.
- ii. 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.

e. Departmental (Internal) Complaints

- i. See department policy on Employee Complaints (ADM-3.04)

f. Complaints by Prisoners

- i. Any prisoner who alleges misconduct or mistreatment by a department employee shall be advised by the officer-in-charge of the station of his/her right to submit a complaint report form in the usual manner and such complaints should be investigated and processed in the same manner as other citizen complaints.

g. Complaints from Governmental Agencies

- i. 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 the standard complaint report form and an investigation initiated in the usual manner.

h. Street Complaints

- i. 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 commander.

i. Verification of Receipt

- i. 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. [52.1.5(a)]
- ii. 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.
- iii. When a complaint is received over the telephone or through the mail, the Internal Affairs Investigator shall be responsible to ensure that the complainant is sent a copy of his/her complaint, along with a cover letter (see policy attachment) to serve as a written verification that the complaint has been received.

B. Investigative Procedures

1. Categories of Complaints

- a. The following guideline has been established to indicate which categories of complaints will be handled and investigated by the Internal Affairs Investigator, and which by a shift supervisor, as a part of routine discipline.
- b. The criteria for determining the categories of complaints to be investigated by the Internal Affairs Investigator include, but are not limited to, allegations of: [52.1.1.(b)]

- i. Corruption
 - ii. Brutality
 - iii. Use of excessive force
 - iv. Violation of civil rights
 - v. Criminal misconduct; and
 - vi. Any other matter as directed by the Chief of Police.
- c. Criteria for the assignment of an investigation to an officer-in-charge of the station may include, but are not limited to such offenses as: *[52.1.1(a)]*
- i. Alleged rudeness;
 - ii. Tardiness; and
 - iii. Minor cases of insubordination.
- d. Reports of investigations performed by shift commanders shall be forwarded and reviewed by the Internal Affairs Investigator. *[52.1.1(c)]*

2. *Immediate Resolution of a Complaint*

- a. In some cases a complaint can be resolved to the complainant's satisfaction at the time by the shift commander of the station, in which case this fact should be reported in writing by the shift supervisor, and, if possible, acknowledged in writing by the complainant.
- b. This immediate resolution can often be accomplished 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.
- c. Under no circumstances, however, will a justifiable complaint be refused, delayed, or otherwise rejected in this manner.

3. *Investigation of Complaints*

- a. The Internal Affairs Investigator shall be responsible for conducting Internal Affairs investigations and shall report directly to the Chief of Police. *[52.1.2]*

- i. The affected employee shall be provided a written statement of the allegations against him from either the Chief of Police, or the Internal Affairs Investigator. *[52.1.6]*
 - ii. The Internal Affairs Investigator 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.
 - iii. If the substance of a complaint, if proven, would be of grave nature, or is an accusation of a serious crime and immediate action is deemed necessary, the Chief shall be notified forthwith in order that an investigation can be initiated without delay. *[52.1.3]*
 - iv. Before a department employee is questioned or directed to submit a report regarding a complaint, and unless the Chief determines that disclosure might jeopardize the investigation, such employee shall be issued a written statement of the allegations and in either case the employee will be advised of his/her rights and responsibilities relative to the investigation. *[52.1.6]*
- b. Any Internal Affairs investigation must be commenced immediately upon receipt of the complaint and must be completed within ninety (90) days. *[52.1.4]*
- i. If extenuating circumstances preclude completion within ninety (90) 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.
 - ii. If the investigation is not completed within ninety days, the complainant shall be provided a progress report, in the form of a written letter, every thirty days until the completion of the investigation. *[52.1.5(b)]*
- c. 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.
- d. CRIMINAL PROCEEDINGS: 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.

- i. 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.
 - ii. 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.
 - iii. 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.ⁱ However, as discussed below, 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.
- 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 and objective investigation and resolution of the charges made.
- i. 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, and any failure to answer completely and truthfully to such inquires may be punished by appropriate disciplinary action, including dismissal from the department.ⁱⁱ
 - (a) 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.ⁱⁱⁱ
 - ii. 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 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 employment. Transactional immunity grants "immunity from prosecution for offenses to which compelled testimony relates."^{iv}
- iii. 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.
- iv. 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.
- 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 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."
- g. 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;^v however, a request for an attorney or an employee representative to be present will be granted if the investigation is not thereby unduly delayed.
 - i. Except in unusual situations, any interview or questioning should take place during the employee's regular duty hours.
 - ii. 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.

- iii. A department employee shall not be harassed or threatened during this period of questioning.
- h. 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.
 - i. An internal administrative investigation should be conducted with the same degree of professional competence as is devoted to a criminal investigation.
 - ii. Upon orders of the Chief of Police, 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. *[52.1.7(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. 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. *[52.1.7(b)(c)]*
- j. SEARCHES
 - i. 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.^{vi}
 - ii. 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.
- k. 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.^{vii} *[52.1.7(d)]*

- l. 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.^{viii}
[52.1.7(e)]
- m. RECORDING INTERVIEWS: If possible, the complete interview with an employee in all internal administrative investigations should be recorded mechanically or by a qualified stenographer.
- n. WITHDRAWN COMPLAINTS: 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.
 - i. Even though a complaint is withdrawn, a full report of the investigation to date should be prepared by the Internal Affairs Investigator for the Chief and his/her approval obtained for the termination or continuation of the investigation.
 - ii. 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.

C. Report of Investigation *[52.1.9]*

1. At the conclusion of any administrative investigation, a full written report shall be prepared for submission to the Chief, which shall include the following: *[52.1.3]*
 - 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 and a definitive statement as to whether the charges made by the complainant were:
 - i. SUSTAINED: The complaint was valid and supported by sufficient evidence;
 - ii. NOT SUSTAINED: There was inadequate or insufficient evidence to either prove or disprove the complaint;
 - iii. UNFOUNDED: The allegations were baseless and without foundation; or
 - iv. 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. Upon receipt of the report of investigation, the Chief should take further action as is necessary based upon findings in the particular case.
3. 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.
4. Every person who has filed a complaint against an employee shall be notified promptly as to the final results of the investigation, personally if possible or otherwise by mail. *[52.1.5(c)]*
 - a. If a disciplinary hearing is deemed necessary, the complainant shall be notified that his/her testimony will be required at that time.

D. Confidentiality of Internal Affairs

1. 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 under lock and key by the Chief of Police. *[52.1.10]*
2. The Internal Affairs Investigator should note in his/her reports of 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.

3. 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, and such release has been specifically authorized by the Chief of Police.
4. A concise summary of the completed investigation will be kept in a file in the office of 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.

E. 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 appraised of the case for the purpose of advising on legal issues and ultimate prosecution, if necessary. Contact shall be made through the Internal Affairs Officer.

F. Annual Report

1. The Chief of Police shall make available for public inspection, a summary of complaint statistics (both citizen complaints and internal affairs), indicating the number of complaints filed (by type of complaint), and the outcome of the investigations undertaken (by outcome classification). In addition, the summary should outline the procedures the public may follow in filing a complaint. [52.1.11, 52.1.12]



JOHN J. THOMAS
CHIEF OF POLICE
chief@truropolice.org

"A STATE ACCREDITED POLICE AGENCY"

Citizens Complaint Report

To the Citizen:

Members of the Truro Police Department are professionals, and as such are expected to maintain exceptionally high standards in the performance of their duties

Effective and efficient performance of their duties require that members of the Truro Police Department maintain the respect and cooperation of their community. This requirement dictates that the conduct of all Truro Police Officers be above reproach in all matters both within and outside the department.

Misconduct of Truro Police Department employees is not and will not be condoned. I appreciate your bringing this matter to our attention so that these standards can be maintained

As required by the terms of the collective bargaining agreement between the Truro Police Employee's Federation and the Town of Truro, all written complaints against a police department employee will be investigated.

Because of these requirements I ask that you complete the attached complaint form as completely as possible.

Upon receipt of the complaint, an investigation will be conducted promptly and you will be contacted by the Internal Affairs Investigator. Upon completion of this investigation he will submit a written report to me together with his recommendation for my review and for my action.

If you have any questions concerning the investigation or disposition of your complaint report, please feel free to contact me.

Sincerely,


John J. Thomas
Chief of Police



344 Route 6, Post Office Box 995, Truro, Massachusetts 02666-0995
508-487-8730 www.truropolice.org





Truro Police Department

"...dedicated to public service..."

John J. Thomas, Chief of Police



February 29, 2000

VIA FIRST CLASS MAIL

Joseph I. Sample
123 Main Street
Anywhere, MA 12345-6789

Dear Mr. Sample,

This is to acknowledge receipt of the complaint report made by you on Thursday October 31, 1999, relative to the alleged misconduct of an employee of this department. As the Internal Affairs Investigator for the department I will be conducting an investigation into this matter.

During the course of the departmental investigation of this complaint report, you may be contacted for further information. Additionally, if it is necessary to conduct a disciplinary hearing, your attendance and testimony may be required; if so, you will be notified of the date, time, and place of the hearing.

You should receive a status report on this matter within two weeks. If you have not heard anything within that time or if you have any questions, please contact either myself or the Chief of Police.

Very truly yours,

Internal Affairs Investigator



Truro Police Department
"...dedicated to public service..."



John J. Thomas, Chief of Police

February 29, 2000

VIA FIRST CLASS MAIL

Joseph I. Sample
123 Main Street
Anywhere, USA 12345-6789

Dear Mr. Sample,

Your complaint report, which was filed on Thursday October 31, 1999, against an employee of this department has been investigated, and it has been established that ... an option from below to be inserted here...

- Option 1: the officer's conduct was in violation of departmental policy. Appropriate disciplinary action has been taken.
- Option 2: there is insufficient evidence to support the claim that the officer's was in violation of departmental policy.
- Option 3: the officer's conduct was not in violation of departmental policy.

This department is committed to high standards of professionalism, and personnel Misconduct will not be condoned. We appreciated you bringing this matter to our attention so that these standards can be maintained. If you have any questions concerning the investigation or disposition of your complaint report, please contact me.

Very truly yours,

Internal Affairs Investigator

344 Route 6 • Post Office Box 995 • Truro, MA 02666
Telephone (508) 487-8730 • Facsimile (508) 487-8736

ⁱ *Uniformed Sanitation Men 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).

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

ⁱⁱⁱ Id.

^{iv} Id.

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

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

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

^{viii} M.G.L. c. 149, s. 19B