

Waltham Police Department

PROFESSIONAL STANDARDS

CHAPTER 52A

General Order Number: GO-01 10/2015

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Accreditation Standards: 26.1.4, 26.1.5, 26.1.6, 26.1.8, 52.1.1, 52.1.2, 52.2.1, 52.2.4, 52.2.7, 52.2.8

Reference: Fifth Amendment to the United States Constitution; Article Twelve of the Massachusetts Bill of Rights

POLICY:

It is the policy of the Waltham Police Department that all allegations of employee misconduct are appropriately investigated and promptly adjudicated. Additionally, all reports or accusations made against members of the department, or the department in general, from all sources shall be completely investigated in order to ensure the integrity of the department and its members. **[52.1.1]** All aspects regarding the monitoring of professional standards will be performed diligently with fairness and integrity. A proper administrative system will not only provide for necessary corrective action, but will also protect employees from unwarranted and unjustified complaints.

PROCEDURES:

1. INTERNAL DISCIPLINE:

- a. **CODE OF CONDUCT:** All members of the department must be thoroughly familiar and comply with all department rules, regulations, policies and procedures.
- b. **DISCIPLINARY ACTIONS:** The Department's Rules and Regulations list several methods of discipline to be administered in a fair and impartial manner for infractions of department rules, regulations, policies and procedures. These include oral reprimand, written reprimand, demotion, suspension, and dismissal.
- c. **ALTERNATIVES TO DISCIPLINE:** The following methods may also be employed in addition or as alternatives to the above formal means of discipline:
 1. **TRAINING:** When a member's disciplinary or productivity deficiencies are determined to be the result of a training issue, a member's disciplinary or productivity deficiencies may be addressed by additional training in the problem area. Successful

completion of the course of training and application on the job will determine the effectiveness of this method. At the discretion of the Chief of Police, an employee may be required to attend such training. [26.1.4 -2A, B]

2. **COUNSELING:** At those times that a supervisor recognizes a minor problem or the potential for one with a member, he or she may choose to discuss the matter with the employee and attempt to remedy the situation before more stringent disciplinary methods are required. [26.1.4-2C, D]

d. **ROLE AND AUTHORITY OF THE SUPERVISOR:** [26.1.5]

1. The first-line supervisor bears the primary responsibility for the conduct, discipline, and duty performance of all personnel under his supervision and the basic accountability for failure to take warranted disciplinary action.
2. The first-line supervisor's familiarity with his personnel allows him the best opportunity to observe or foresee disciplinary problems and to determine the most appropriate methods to deal with them.
3. Supervisors and Commanding Officers shall be responsible for discovering marginal or problem employees and for uncovering any evidence of corruption, dishonesty, or malfeasance by personnel under their command.
4. Supervisors must exercise discretion in the application of disciplinary action. As noted, before, the use of counseling by a supervisor may avert a potential disciplinary problem or prevent a minor problem from escalating. Supervisors may also issue an oral reprimand to a member for minor infractions when they occur.
5. All superior officers have the authority to relieve from duty a member (**sworn or non-sworn**) whom they deem to be unfit for duty. [52.2.7] Examples of this type of infraction would include but not be limited to: drinking of an alcoholic beverage while on duty, reporting to work while intoxicated, refusal to obey a direct order, or criminal conduct. If a member is so relieved from duty, the Chief of Police or his designee shall be notified and advised of the circumstances surrounding such action prior to the member's next tour of duty.
6. All superior officers have the duty to ensure that discipline is maintained within the department. It must be remembered that

discipline can be positive in nature and includes recognizing and rewarding exemplary performance, training, counseling, as well as punitive action. [26.1.4-2E, F]

7. The following is an outline by rank and command level of authority of superior officers to discipline their subordinates. [26.1.5], [52.2.7]

- a. **SERGEANT:** The sergeant has the authority to counsel, evaluate, praise, and recommend for recognition. He also has the authority to verbally admonish, relieve from duty as specified above, and recommend a formal written reprimand or more serious punitive disciplinary action, as appropriate. [26.1.4-2E, F]
 - b. **LIEUTENANT:** The lieutenant has all of the above, plus the authority to issue written reprimands with the approval of his division commander.
 - c. **CAPTAIN:** The captain has all of the above, plus authority to issue formal written recognition of exemplary individual performance. He also has the authority to issue formal written reprimands.
 - d. **DEPUTY CHIEF:** The deputy chief has all of the above, plus the authority to suspend for a period not to exceed five days (as specified in 301.8 of the Waltham Police Regulations).
 - e. **CHIEF OF POLICE:** The chief has all of the above, plus the authority in accordance with all applicable law and Department of Personnel Administration Rules, to promote, impose punishment duty, decrease annual leave, suspend, and terminate.
- e. **INSTITUTING DISCIPLINE:** In all cases involving disciplinary action, the following procedures shall be followed: [26.1.4-2A, C, E]
- 1. An administrative report shall be completed and forwarded to the immediate supervisor or commanding officer of the officer who is the subject of such request or notice.
 - 2. Upon receipt of this report the supervisor or commanding officer shall take all necessary steps within his authority to address the situation. In those cases where such request exceeds his authority,

the request shall be forwarded to his immediate supervisor for action.

3. Upon receipt of the report the Commanding Officer shall review the circumstances and ensure that proper action was taken. In all cases of serious violations, the administrative report shall be forwarded to the Chief of Police.

f. **APPEAL OF DISCIPLINARY ACTION: [26.1.6]**

An employee who believes he has unjustly received disciplinary action, may appeal the discipline. As stated in Rules and Regulations III, section 301.13, a member can appeal a suspension to the Civil Service Commission in accordance with MGL Chapter 31.

An employee receiving an oral or written reprimand, which they feel was not issued with just cause, may avail themselves of the grievance process through their union. The union is recognized by the City in accordance with provisions of the statute as the exclusive representative for the purposes of collective bargaining with respect to wages, hours, and other conditions of employment for all members of the unit.

Any non-unionized non civil service employee may avail themselves of the City of Waltham Progressive Discipline Policy to appeal any punishment they feel was without just cause.

2. **COMPLAINTS:**

- a. **IN-PERSON COMPLAINTS:** If a complainant enters the station to report an incident of employee misconduct, whether serious or minor, the OIC shall be notified. The OIC, or his designee, a superior officer, shall receive the complaint by utilizing the Report of Alleged Police Misconduct, Form 52-1. No complaint will be refused because the complainant does not wish to sign a complaint or identify himself or herself. **[52.1.1]** All complaints must be reduced to writing, if not by the complainant, then by the superior officer taking the complaint.
- b. **TELEPHONE COMPLAINTS / ANONYMOUS COMPLAINTS:** Persons making a complaint by telephone against an employee or the police department should be informed that their signed complaint is requested. However, no complaint will be refused because the complainant does not wish to sign a complaint or identify himself or herself. **[52.1.1]** Anonymous complaints will be considered on their individual merits. All complaints must be reduced to writing, if not by the complainant, then by the superior officer taking the complaint, by completing a Report of Alleged Police

Misconduct, Form 52-1.

- c. **COMPLAINTS RECEIVED BY MAIL OR ELECTRONIC-MAIL (E-MAIL)**: 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 Report of Alleged Police Misconduct, Form 52-1 and the original communication attached thereto.
 - d. **COMPLAINTS BY DETAINEES**: Any detainees who alleges misconduct or mistreatment by a department employee shall be advised by the Officer-in-Charge of his or 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.
 - e. **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 Report of Alleged Police Misconduct, Form 52-1.
 - f. **FIELD COMPLAINTS**: If an officer in the field 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 or her complaint should be directed to the Officer-in-Charge at the station. The officer should then contact the shift supervisor or OIC, if possible, and attempt to arrange for the complainant to meet with the supervisor or OIC.
 - g. **RESCINDED COMPLAINTS**: Once a complaint has been reported, either in writing, verbally or otherwise, and then the complaint is rescinded by the complainant; the complaint will still be investigated unless it is determined unnecessary by the Chief of Police.
 - h. **NON-MISCONDUCT COMPLAINTS**: Complaints which are deemed by the OIC to be non-misconduct complaints, such as a motorist who complains about receiving a citation, are matters for the court and do not require the completion of a Report of Alleged Police Misconduct, Form 52-1.
3. **LEVELS OF COMPLAINTS**: All complaints will be received by the Officer-in-Charge, or in his absence, the shift supervisor, whether against the police department as a whole or a specific employee. [52.2.1-1]

When possible, complaints of a **minor** nature shall be investigated and resolved quickly and effectively by the superior officer receiving them. However, once reviewed by the Chief of Police, the Chief of Police may elect to further the

investigation.

Minor complaints, whether resolved or not, shall be documented on the Report of Alleged Police Misconduct, Form 52-1.

a. **MINOR COMPLAINTS: [52.2.1-1]** Complaints that are considered minor include, but are not limited to:

1. Rudeness.
2. Improper uniform.
3. Use of foul/inappropriate language.

b. **SERIOUS OR CRIMINAL COMPLAINTS:** Complaints that are considered serious include, but are not limited to:

1. Corruption (ex. bribery).
2. Brutality.
3. Use of excessive force.
4. Violation of civil rights.
5. Criminal misconduct (ex. larceny, drug possession).

Serious or criminal complaints will be referred to the Chief of Police for resolution (See Chapter 52B Internal Affairs). Any superior officer receiving a complaint, which calls for an expeditious investigation, shall notify the Chief of Police.

c. **IMMEDIATE NOTIFICATION OF SERIOUS OR CRIMINAL CONDUCT:**

The superior officer that receives a complaint against the Department, an officer or other employee that appears serious or criminal in nature and warrants an expeditious investigation, shall immediately notify the Commanding Officer of the Detective Division. The Detective Division Commander shall be responsible for notifying the Chief of Police or his designee upon the receipt of complaint against the agency or its employees which could warrant an Internal Affairs investigation. The Detective Division Commander shall notify the Chief immediately upon receipt of a complaint of a serious nature. This would include, but is not limited to, any time an officer (on or off duty) is accused of committing a criminal act of

any nature. The Detective Division Commander shall notify the Chief as soon as possible and reasonable for all other complaints. Initial notification prior to a formal investigation will be delivered verbally to the Chief, followed up in writing. The subsequent investigation will be conducted pursuant to department policy. [52.2.2]

- d. **SERIOUS COMPLAINT DETERMINATION:** The Chief of Police will be the final authority in determining whether a complaint will be deemed serious enough to warrant an internal affairs investigation. [52.2.1-2]

4. **CITIZEN COMPLAINTS:**

- a. **RESPONSIBILITY FOR RECEIVING COMPLAINT(S):** The Officer-In-Charge at the time a complaint is made will be responsible for the efficient receiving and complete recording of any complaint of police employee misconduct made in person or by telephone. In his absence, the superior officer inside police operations shall be responsible for this function. All personnel shall notify the Officer in Charge immediately upon a citizen requesting to file a complaint against a department employee.
- b. **COMPLAINT PROCESSING – COURTESY:** The utmost courtesy and cooperation shall be extended to all persons registering complaints or otherwise inquiring about the complaint procedure. Information regarding the complaint filing process should be disseminated immediately upon request. No person shall be denied the opportunity to register a complaint, nor should any person be directed to return or call back later.
- c. **REPORT OF ALLEGED POLICE MISCONDUCT, FORM 52-1:** shall be used to record all allegations of misconduct against employees of the department by a citizen.
- d. **ACKNOWLEDGEMENT:** Every person registering a written complaint shall receive a copy of Form 52-1 to serve as a receipt verifying that such complaint has been received by the department and will be processed. [52.2.4a]
- e. **SIGNATURE REQUEST:** Anyone making a complaint in person shall be requested to read over the completed complaint report form, to make any necessary corrections and to sign the complaint. If the complainant refuses to sign the complaint, a notation to that effect shall be made on the complaint report form and the complaint shall be handled in the same manner as a signed complaint.
- f. **MISCONDUCT OBSERVED BY A SUPERIOR OFFICER:** If a superior officer observes misconduct the misconduct should be documented

in the form of an Administrative Report to the officer's Division Commander.

5. COMPLAINT PROCESSING:

All complaints against the department or its employees will be documented, thoroughly investigated and forwarded to the Chief of Police. **[52.1.1]**

When a complaint is received by a superior officer the complaint shall be documented on a Report of Alleged Police Misconduct, Form 52-1. This form is to be sealed in a plain envelope and marked "confidential" to the attention of the Chief of Police. A copy of this form shall be given to the complainant by the receiving superior officer.

- a. **MINOR MISCONDUCT ALLEGED:** **[52.2.1a]** The Report of Alleged Police Misconduct, Form 52-1, will be completed and if warranted, a brief administrative report to the chief of police will be submitted with any additional detail by the receiving superior officer.

If the alleged misconduct reported is minor the superior officer, when appropriate, should conduct an investigation, make a finding and take or recommend corrective action as appropriate. This information would be included in an administrative report to the chief of police.

Both the Report of Alleged Police Misconduct, Form 52-1 and the administrative report will be placed in a plain envelope and marked "confidential" to the attention of the chief of police.

A copy of the Report of Alleged Police Misconduct, Form 52-1 only, shall be given to the complainant by the receiving superior officer.

- b. **SERIOUS MISCONDUCT ALLEGED:** If the alleged misconduct is serious and an immediate investigation is necessary the Chief of Police shall be notified immediately. (Reference Chapter 52B – Internal Affairs)

If the alleged misconduct is serious and an immediate investigation is not necessary then the matter will be handled as an internal affairs investigation **[52.2.1-2]** (Reference Chapter 52B – Internal Affairs)

Categories of complaints that may be referred to Internal Affairs may include (but are not limited to) the following:

1. Corruption.
2. Brutality.

3. Misuse of Force.
4. Breach of Civil Rights.
5. Criminal Misconduct.

6. **NOTIFICATION:**

A copy of the Report of Alleged Police Misconduct, Form 52-1 only, shall be given to the complainant by the receiving superior officer.

The original Report of Alleged Police Misconduct, Form 52-1 and all follow-up information, if any, shall be placed in a sealed envelope and submitted to the Chief of Police.

Once reviewed by the Chief of Police, a copy of the complaint will be given to the officer(s) implicated, unless the Chief of Police has determined, in his sole discretion, that providing a copy of the complaint to the officer(s) implicated therein will jeopardize or compromise the investigation of that complaint.

If further investigation is needed, the Chief of Police may designate a superior officer to follow-up the complaint.

7. **INVESTIGATION DISPOSITION:**

- a. **CHIEF OF POLICE:** At the conclusion of a disciplinary investigation into allegations of police misconduct, an administrative report will be submitted to the Chief of Police.

The investigative report will be based upon all the evidence gathered, statements of all involved parties, and any mitigating circumstances.

The investigating superior officer will evaluate the situation and issue a conclusive statement, or conclusion of fact which determines under which of the below-listed categories the allegations fall. **[52.2.8]**

1. **PROPER CONDUCT:** The incident did occur, but the actions of the accused were justified, lawful, and proper.
2. **IMPROPER CONDUCT:** The investigation disclosed sufficient evidence to prove the allegations made in the complaint and the actions of the accused were inconsistent with department policy.
3. **INADEQUATE POLICY:** The investigation disclosed sufficient evidence to prove the allegations made in the complaint, but the action complained about was not inconsistent with department

policy. The department will review the policy to determine what changes in its policies, procedures, and regulations need to be made so as to present clearer guidelines to department personnel and prevent a reoccurrence of the type of action complained about.

4. **INSUFFICIENT EVIDENCE:** The investigation yielded insufficient proof to confirm or to refute the allegation.
5. **UNFOUNDED COMPLAINT:** The investigation disclosed that the allegation is demonstrably false or there is no credible evidence to support the allegation.
- b. **COMPLAINANT:** Once the Chief of Police has reviewed and approved of the findings, the complainant will be notified of the findings by phone or in writing by the Chief of Police or his designee.
- c. **ACCUSED OFFICER:** Once the Chief of Police has reviewed and approved of the findings, the subject of the investigation shall be promptly notified of the final results.
8. **CENTRAL FILING REPOSITORY:** All misconduct investigative files should contain any complaints filed against officers from within or outside the department. The files should contain any matter that could result in disciplinary action by the department. All Internal Affairs reports and affiliated records are to be kept in a locked filing cabinet in the Detective Division Commander's Office. [26.1.8], [52.1.2]
9. **COMPLAINT REVIEW:** The Commander assigned to the Detective Division will review all complaints filed against officers. A yearly review will be conducted in order to identify problems where corrective action can be taken. When an officer has been involved in three incidents within any twelve-month period that involves the use of force, disciplinary action, or internal/external complaints, an alert letter will be sent to the officer's immediate supervisor and Division Commander.