

	DELMAR POLICE DEPARTMENT	
	Policy 2.4 Internal Investigation Process	
	Effective Date: 01/01/15	Replaces: 1-9
	Approved: <u>Ivan Barkley</u> Chief of Police	
	Reference: DPAC: 2.3.1	

I. PURPOSE

It is the policy of this department to provide a thorough, fair, and expeditious disposition of complaints about the conduct of its employees. Further, it is the policy to invite individuals to bring to the department's attention complaints about its employees whenever that person feels the employee acted improperly.

Complaints will be received courteously, and the department will make every effort to ensure that no adverse consequences occur to any person as a result of having brought what they believed was a legitimate complaint to our attention.

All complaints will be investigated according to the procedures described in this directive. The complaint disposition will be consistent with the obligation of providing equitable process for all parties involved.

This directive applies to all allegations of misconduct against department police officers, regardless of duty status.

II. COMPLAINT RECEPTION

It is the policy of the Delmar Police Department to investigate all complaints against the Department and/or its employees, including anonymous complaints.

A. Citizen Complaints

Citizens wishing to file a complaint against an employee will be referred to (1) the employee's immediate supervisor, if available, or (2) the supervisor or highest ranking officer on duty. The supervisor or highest ranking officer on duty will assist the complainant in completing the Complaint Against Personnel Report and will forward the Complaint Against Personnel Report to the Chief of Police.

B. Notification to the Chief of Police

Upon receipt of a complaint *that is not resolved informally by the supervisor (traffic misunderstandings, procedural explanations, etc.) and will require a formal investigation*, the supervisor will forward the completed Complaint Against Personnel

Report, to the Chief of Police within 24 hours or by 1600 hours on the next business day, brief the Chief of Police on the complaint, and obtain a complaint control number.

The Chief of Police will assign responsibility for investigation of the complaint. If the investigation is assigned to a first line supervisor, it may begin immediately. Complaints alleging improper conduct, brutality, or misconduct involving several personnel or supervisory personnel shall be investigated by an outside agency upon request of the Chief. In all other cases, the entire case file will be forwarded to the Administrative Commander.

C. Frivolous or Malicious Complaints

Officers of the rank of First Sergeant and above are authorized to rule as unfounded any complaint that, after suitable investigation, is determined to be malicious, deliberately false, frivolous, or baseless. These accusations must be investigated and documented to protect the integrity of the department and its employees. In such cases, the extent of the investigations may be limited to substantiating the falsity of the accusations. Once the complaint has been investigated, it will be closed as “unfounded” by the Administrative Commander and filed. No further action will be taken against the employee, and the employee may have the complaint expunged according to the provisions of the LEOBR.

D. Written Verification of Complaint

Except for anonymous complaints, the Chief of Police will provide written verification to complainants that the complaint has been received for processing.

E. Status of Investigation

At the conclusion of the investigation, the Chief of Police is responsible for informing the complainant, in writing, that the investigation has been concluded.

F. Employee Complaints

Any employee desiring to file a complaint of misconduct against another department employee will complete the Complaint Against Personnel Report and forward it to the Administrative Commander. The report need not be forwarded through the chain of command.

III. COMPLAINTS ALLEDGING BRUTALLITY

A. Sworn Affidavit Required

Complaints alleging brutality must be properly sworn to prior to any investigation. The complaint may be duly sworn to by the aggrieved person, a member of the aggrieved person’s immediate family, or by any person with firsthand knowledge obtained as a result of their presence at and observation of the alleged incident, or by

the parent or guardian in the case of a minor child, before an official authorized to administer oaths.

B. Time Limit

Generally, an investigation which could lead to disciplinary action for brutality may not be initiated and an action may not be taken unless the complaint is filed within 90 days of the alleged brutality.

C. Exceptions to 90 Day Rule

Maryland courts have created some exceptions to the 90 day requirement. The 90 day rule is a statutory requirement that should be followed in most circumstances. However, if the 90 day period has expired but it appears that good cause has been shown for not meeting it, the brutality complaint will be accepted and forwarded to the Administrative Commander. The decision to investigate or not will be made by the Chief of Police or his/her designee on a case-by-case basis.

D. Supervisors' Responsibilities

1. A supervisor receiving a complaint alleging brutality will determine the extent of injuries, if any, and take the necessary action to preserve evidence related to the brutality complaint. Color photographs will be taken of all visible injuries, torn clothing, scuff marks indicating a struggle, or any other evidence.
2. The supervisor will instruct the complainant that the complaint must be duly sworn to. The complainant shall be provided with a Complaint Against Personnel Report. Alternatively, the complainant may write the complaint on his/her own paper and take it to an official who is authorized to administer oaths. Once sworn to, the complaint must be forwarded to the Administrative Commander.

IV. COMPLAINT INVESTIGATION

All investigations will include interviews of the complainant, any known witnesses, and the officer(s) involved. Deviation from this policy can only be made with the approval of the Chief of Police. In addition, the investigator will obtain all available physical and documentary evidence. Investigations must be conducted in full accordance with the requirements of Maryland and or Delaware LEOBR.

A. Interviews of Complainant and Witnesses

Whenever possible, complainants' and witnesses' statements should be tape recorded, with their permission.

B. Notification to Police Officer; Interrogation of Police Officers

The employee under investigation need not be informed of the investigation until it becomes necessary to interview or interrogate him/her. The Administrative

Commander will furnish investigators with the most recent LEOBR requirements regarding interrogation of police officers.

When employees are notified that they have become the subject of an internal investigation, the investigator will issue the employee a written statement of the nature of the complaint prior to any interrogation. The notification will include a statement of the employee's rights and responsibilities relative to the investigation.

The notification will be made to the officer through an inter-office correspondence. In addition, police officers under investigation are provided with a copy of the MD. Code, Public Safety Article, Title 3, Sections 3-101 through 3-113, and or DE Title 11, Chapter 92, Sections 9200 through 9209, the "Law Enforcement Officers' Bill of Rights."

C. Special Investigative Procedures

1. Police officers under investigation may be ordered to submit to a polygraph examinations, pursuant to the provisions of the LEOBR, upon order of the Chief of Police or their designee.
2. Police officers may be ordered to submit to a medical or laboratory examination for the purpose of detecting the presence of controlled dangerous substances in the employee's bodies. The authority, basis, and procedures to be followed are found in The Town Delmar Personnel Manual, Article 11, as amended.
3. Police officers may be ordered to submit to a chemical test of their blood, breath or urine, pursuant to the provisions of the LEOBR. (MD. Code, Public Safety Article, Title 3, Section 3-104). Such a test will be at the Department's expense, and will be specifically related to the subject matter of an internal investigation.
4. Employees may be required to allow themselves to be photographed, upon order of the Chief of Police or his/her designee. Photographs of all employees are maintained on file in the office of the Administrative Commander, and are updated as necessary.
5. Employees may be required to participate in lineup identification sessions upon order of the Chief of Police or thier designee.
6. A law enforcement officer may not be required or requested to disclose any item of his or her property, income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his/her family or household) unless that information is necessary in investigating a possible conflict of interest with respect to the performance of his/her official duties, or unless such disclose is required by state or federal law.

D. Liaison with States Attorney / District Attorney General

In cases involving alleged criminal misconduct by a department employee, the Administrative Commander will seek legal advice and assistance in case preparation from the State's Attorney and or the District Attorney General. Cases of this nature will not be delegated to line officers for investigation.

V. CONCLUSION AND REPORT

After completing the investigation, the investigator will submit an internal report for review by the Chief of Police and the Administrative Commander. The report will be submitted in inter-office correspondence to the Administrative Commander. The report will include:

1. The Allegations
2. A statement of facts in chronological order
3. The findings of the investigation

The following are classifications of findings of each allegation of employee misconduct:

A. Exonerated

The alleged act occurred but was justified, legal and proper. The action of the agency or the employee was consistent with agency policy.

B. Policy Failure

Although the action of the agency or the employee was consistent with agency policy, the complainant suffered harm. The investigator will refer the deficient policy to the Administrative Commander for review and revision.

C. Suspended

When information critical to the case is currently unavailable but may become available at some future time.

D. Sustained

The accused employee committed all or part of the alleged acts of improper conduct

E. Not Sustained

The investigation produced insufficient information to prove or to disprove the allegation.

F. Unfounded

The alleged act(s) did not occur or an officer of the rank of First Sergeant or above has determined the complaint to be malicious, deliberately false, frivolous or baseless.

G. Withdrawn

The complainant has indicated that they wish to withdraw their complaint.

H. 90 Day Rule

When a complainant alleging excessive force fails to file a duly sworn complaint within 90 days of the alleged incident as required by Maryland law.

VI. FINAL DISPOSTION

Officers will be informed in writing of the final conclusion of any investigation. The investigator or the Administrative Commander is responsible for this notification. Cases resulting in sustained complaints will be presented to a trial board according to the requirements of LEOBR, unless the officer waives this right in writing.