

Stowe Police Department

General Order: 1.40	Related General Orders:
Citizen Complaints / Internal Administrative Investigations	
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.	
Applicable Vermont Statutes:	
Date Implemented: 06/25/2013	Date Revised:

I. **PURPOSE:**

1. It is imperative that the Police Department operates in a degree of transparency and is responsive to complaints alleging employee misconduct and external concerns regarding the operation of the agency. Members of the public should be provided with a reasonable avenue for any redress of grievances they may have with the service received by agency employees or the conduct of the Police Department. This policy provides members of the agency with the procedures for the acceptance of complaints, the initiation of the administrative investigative process, the process for conducting a fair and reasonable investigation, the proper methods for adjudication of these administrative investigations, and the methods for the administration of fair, reasonable and appropriate discipline.

II. **POLICY:**

1. The Police Department will accept and document all complaints alleging employee or agency misconduct for the following principle reasons:
 - A. To ensure that complaints alleging employee or agency misconduct are accepted and investigated in a consistent and reasonable manner to uncover the truth of the allegations,
 - B. To identify areas of misunderstanding by the complaining citizen,
 - C. To identify employees whose attitude, behavior and/or performance is in need of correction and supervisory intervention,

- D. To protect agency employees and the Department from erroneous complaints, and
- E. To identify Department policies, training and/or practices in need of reevaluation, clarification and/or correction.

III. **DEFINITIONS:**

Complaint of employee misconduct: A complaint is an allegation from any source of an act or omission by an agency employee, which, if proven true, would be considered misconduct or a violation of agency policies, rules or regulations.

Note: Complaints regarding the validity of traffic citations or parking tickets are not considered complaints for this definition and the party should be referred to the proper court for traffic citation resolution and to the Chief of Police for parking ticket matters.

Complaint of agency dissatisfaction: A complaint from an external source of dissatisfaction with an agency policy or practice.

Public concerns regarding law enforcement operations not amounting to a complaint: A concern expressed by a member of the public which does not meet the agency's definition of a complaint, but must be documented by the agency employee receiving the information from the member of the public.

Citizen Complaint Form: A form available to the public which allows them to file a report of misconduct or complaint against an officer.

IV. **PROCEDURE:**

1. Sources for complaints: A complaint can originate from any of the following sources:
 - A. Individual aggrieved person
 - B. Third party
 - C. Anonymous
 - D. Agency employee
 - E. News media
 - F. Governmental agency
 - G. Complaints can be made by members of the public:
 - a. In person
 - b. By telephone
 - c. By letter
 - d. Email

2. Whenever a police employee becomes aware of a citizen's complaint or becomes aware of misconduct of a Department employee or of another agency employee, s/he shall immediately notify a supervisor.

3. If a supervisor cannot be made available or the party making the complaint refuses to wait for the supervisor, the employee will gather all available information regarding the complaint and contact numbers.

4. If there is no supervisor on-duty at the time when a citizen makes a complaint, an officer will instruct the complainant to come back when there is a supervisor on-duty or the officer may provide the citizen with a citizen complaint form. The citizen will be instructed to take the complaint form, fill it out and bring it back when there is a supervisor on-duty.

5. After the complainant has completed the form, the supervisor should review the contents of the written complaint with the complainant. The supervisor will inform the citizen that his/her complaint will be investigated.

6. A Department supervisor accepting a complaint by telephone will complete a Citizen Complaint Form with as much information as the complainant provides. It is essential that the complainant's name, address, and telephone number appear on the form. If the complainant insists on remaining anonymous, he/she will be advised that this will seriously hamper a complete investigation. The words "Telephone Complaint" will be entered in the complainant's signature box. If a Department officer takes the phone complaint the form will be completed as described above and forwarded to a supervisor. If the complainant is agreeable to provide their mail address, a citizen complaint form may be mailed to the complainant.

7. Whenever a supervisor becomes aware of a person requesting to make a complaint or an incident which will likely result in a complaint or administrative investigation, the supervisor shall conduct an immediate preliminary investigation including, but not limited to:

A. Conduct a recorded interview with the complaining person attempting to ascertain each and every allegation of misconduct alleged. The complaining person can refuse to be recorded. In these cases the supervisor shall continue to interview the complainant and note the refusal on the completed Public Service Report. Should the allegations not amount to a complaint consistent with the agency definition of a complaint, the supervisor will advise the party that his/her dissatisfaction will be recorded and forwarded for agency review.

B. The supervisor accepting the complaint, or if the incident is an occurrence likely to result in a complaint or administrative investigation and no specific complaining person is present, the supervisor shall, if applicable:

a. Respond to the scene of the police encounter/incident.

- b. Determine the identity of persons involved, witnesses, and other agency personnel who were present.
- c. Ensure that proper evidence is collected and/or documented.
- d. Ensure that all reasonable documentation and physical evidence is maintained. This includes police reports, communications/dispatch information, mobile data terminal transmissions, medical documentation, and video recording of any portion of the police involvement.
- e. Ensure that all necessary medical treatment is provided and documentation is preserved.

9. The complaint initiation process is not incumbent on cooperation of the complaining person. In the event that the complaining person refuses to cooperate with the investigation or there is no identifiable complainant and the information known to the supervisor satisfies the agency's definition of a complaint, the complainant will be listed as **Agency**.

10. Chief of Police

- A. The Chief of Police will be notified of all complaints against an employee, including complaints of employee misconduct and any Department dissatisfaction.
- B. An assessment of each complaint received will be made by the Chief of Police or his designee, for a determination of how the matter will be investigated.
- C. Upon notification, the Chief of Police may at his discretion assign the investigation to another police agency. The Chief of Police may also review the incident with the States Attorney and/or the Attorney General's office. The facts and circumstances involved in the incident will determine the appropriate course of action.
- D. All complaints will be issued an administrative tracking number from the Chief's office. The tracking number will be prefaced by the calendar year (i.e. Administrative Tracking #2013-1)
- E. Reported misconduct or complaint that takes place outside agency jurisdiction will be investigated the same as it would have had the incident occurred within this agency's jurisdiction. The assigned investigator will work cooperatively with the other agency if applicable.
- F. After review by the Chief of Police, the complainant will be contacted by the investigating officer or the Chief of Police with the findings and outcome of the investigation.
- G. Completed investigation reports classified as unfounded, exonerated or not sustained will be maintained in the Internal Administrative file in the Chief's office. Sustained complaints will be filed in the individual employee's department

personnel file with a copy in the Internal Administrative file. All Internal Administrative reports will be filed in accordance to any applicable collective bargaining agreement.

11. Notification and Administration of Investigation:

- A. Unless and until directed to do so by the Chief of Police or his designee, an employee making or receiving a complaint and a Supervisor to whom a complaint of misconduct or improper conduct is reported shall not advise the member against whom the allegation was made or any other person of the allegation.
- B. The Chief of Police or his designee shall notify the employee prior to an interview that the employee is a suspect or a person named in the investigation, and will be informed of the nature of the investigation.
- C. The employee under investigation, or an employee who is being interviewed as a witness in an investigation of another employee, shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating officer, and all other persons to be present during the interrogation. All questions directed to the employee under interrogation shall be asked by and through one interrogator at any one time.
- D. The employee, upon request, shall have the right to be represented by counsel or any other responsible representative of his or her choice who shall be present and available for consultation at all times during the interrogation unless waived by the employee. Upon the request of the employee, the interrogation shall be suspended for a reasonable period of time to obtain representation. A member against whom an allegation has been made, which allegation is being investigated, shall be afforded all rights and protections provided by law. Officer's rights guaranteed by Federal Constitutional Standards and Vermont Law shall be respected. (i.e. Miranda/Garrity)
- E. The employee shall be entitled to reasonable intermissions for personal necessities and for the purpose of consultation with his or her representative.
- F. The employee will be given prior access to any reports he or she has submitted related to the interrogation and shall be allowed to refer to such reports and any of his or her notes during the interrogation.
- G. The interrogation of the employee shall take place during his or her regular scheduled hours of work, unless the seriousness of the investigation is of such a degree that immediate action is required. Hours of work cannot be rescheduled in

an effort by the town to avoid overtime compensation as a result of the interrogation. When an interrogation takes place during an employee's off-duty hours, the employee will be compensated in accordance with the Collective Bargaining Agreement.

- H. The employee's representative shall not be compelled by the agency to disclose any information received from the employee under investigation. This shall not relieve the employee's representative of his or her obligations as a police officer.
- I. Whenever possible, all interrogations shall take place on the town's premises unless otherwise agreed to by the employee, and shall be conducted in a respectful manner.
- J. When an employee who is being interrogated is ordered to answer questions which are directly and narrowly related to his or her duties or his or her fitness for duty, it is expressly understood that the answers to those questions cannot be used against him or her in criminal proceedings. It is further understood that any information gained in the course of an employee's investigation is confidential and shall not be voluntarily released to any party outside the office of the Chief of Police or the Town, except as may be compelled by law.
- K. When an outside agency is called upon to conduct an internal investigation, it is understood that this agency must comply with all rights guaranteed to the employee being interrogated by the Collect Bargaining Agreement.
- L. All interrogations shall be limited in scope to activities, circumstances, events, conduct or acts which pertain to the incident which is the subject of the investigation.
- M. The employee and his or her representative and or the town shall be allowed to record the entire interrogation by both audio and or visual means. If audio and or video is used, either party shall furnish upon request a copy of said audio and or video to either party at no cost.
- N. Interviews shall be conducted with no unreasonable delays. The employee may request, and shall be granted a status conference to determine the progress of the investigation. The status conference will be conducted without delay.
- O. When the investigation is completed the employee will be furnished upon request with a copy of all reports of the investigation which will contain all known material facts of the matter to include tape recordings at no cost. If the town records the

- interrogation, a copy of the complete interrogation of the employee, noting all recess periods, shall upon request be furnished to the employee upon its completion. These copies shall be complementary.
- P. The employee and Association shall be advised in writing of the results of the investigation and any future action to be taken. This notice shall contain the case number, Charge(s), Finding(s), and what type of disciplinary action if any was taken, including lengths and terms of the discipline.
 - Q. No employee shall be compelled to take a polygraph during the course of an investigation. Employees may voluntarily take a polygraph upon his/her request.
 - R. The Chief of Police or his designee may commence an investigation without notifying the member and may postpone notification of the member until such time as it would not jeopardize the investigation. However, in no case with the exception of a criminal investigation, will the member against whom the allegation was made be interviewed or questioned concerning it without first having been given proper notification of the allegation against him/her.
 - S. In the case of an allegation of misconduct which consists of criminal conduct, the Chief of Police may, in his/her discretion, direct that an administrative investigation not be commenced or that an administrative investigation already commenced not be continued for an indefinite period of time pending the conclusion of a criminal investigation and/or prosecution by appropriate prosecutorial authorities.
 - T. The person assigned to conduct the internal administrative investigation (herein after referred to as "investigator") shall be acting as the authorized representative of the Chief of Police. In such capacity, the investigator may order any other member to cooperate in the investigation.
 - U. During the course of an investigation, any member, including the member against whom the allegation was made, must answer fully and truthfully all questions asked him/her by the investigator which are specifically directed and narrowly related to the allegation under investigation. Disciplinary action, including dismissal, may be taken against any member who lies and/or refuses to fully and truthfully answer any such question(s) asked of him/her by the investigator.
 - V. The officer shall have the right to appeal any decision reached by the hearing in accordance with the City/Town policies and/or collective bargaining provisions.
 - W. Collective Bargaining provisions relating to internal investigations and discipline shall be adhered to during any administrative investigation.

- X. This General Order and any Town Rules and Regulations will apply to any employee who is not a member of the Collective Bargaining unit.

12. The Investigator assigned to conduct the internal administrative investigation shall (but not limited to):

- A. Evaluate the allegations contained in the Citizen Complaint Form, listen to the tape recording of the complainant, if available, and consult with the person accepting the complaint or learning of the allegation(s).
- B. Obtain all police reports, communications/dispatch records, MDT transmissions, video recordings, and other police documents,
- C. Determine the specific allegations of the complainant and identify any other possible agency violations, whether alleged by the complainant or not, and
- D. Conduct interviews normally in the following sequence:
 - a. Complaining person
 - b. Other public witnesses
 - c. Agency witnesses
 - d. Accused employees; officers shall be given written notice of intended interview regarding allegations and, normally be allowed a reasonable period of time prior to the actual interview.

13. Investigation time limits:

- A. The assigned investigator will complete the internal administrative investigation as soon as possible.
- B. The internal administrative investigation report should be completed within 30 days, with some exceptions permitted as directed by the Chief of Police.

14. Disposition:

- A. Upon completion of his/her investigation into an allegation, the investigator shall prepare a written report of his/her findings, which shall include as a part thereof his/her conclusions, based upon the evidence, as to whether or not the member involved committed an act of misconduct or improper conduct.
- B. The investigator will make a recommendation for the disposition findings for each allegation using the following classifications using the burden of proof of a preponderance of the evidence:

- a. Sustained: there was a preponderance of evidence to prove the allegation
 - b. Not Sustained: there was not sufficient evidence to either prove or disprove the allegation
 - c. Exonerated: the actions of the employee were consistent with the law and agency policies, rules, regulations and practice
 - d. Unfounded: the allegation did not occur
 - e. Policy and/or training deficiency: the allegation occurred but was the fault of deficiencies in agency policy and/or training and cannot be accountable to the employee involved.
- C. If the investigator is a member of the collective bargaining unit, then that investigator will only prepare a written report of his/her findings, which shall include as a part thereof his/her conclusions, based upon the evidence, as to whether or not the member involved committed an act of misconduct or improper conduct. The investigator will not make a recommendation for the disposition findings.
- D. The investigator shall submit his/her report, together with all statements, documents, and materials obtained during the course of the investigation, to the Chief of Police.
- E. Upon receipt of the investigator's report and accompanying materials and conclusions the Chief of Police shall review the same to determine what action should be taken.
- F. The Chief of Police will notify the Town manager of the results of the investigation and any action to be taken.

V. DISCIPLINE:

1. Any violation of this policy may be grounds for disciplinary action consistent with any applicable collective bargaining agreement, statute, Department policy or Town policy.

Issued by: _____
Donald Hull
Chief of Police