

4.04 INTERNAL AFFAIRS



INTERNAL AFFAIRS

POLICY & PROCEDURE NO. 4.04	SECTION ADMINISTRATION	PAGES: 12	ISSUE DATE: April 2, 2024
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 52.1.1, 52.1.2, 52.1.3, 52.1.4, 52.2.1, 52.2.2, 52.2.3, 52.2.4, 52.2.5, 52.2.6, 52.2.7, 52.2.8, 52.2.9, IA-01, IA-02, IA-03, IA-05, IA-06, REC-01		EFFECTIVE DATE: April 19, 2024	REVISION DATE:
ISSUING AUTHORITY: 			
Chief Nathan C. Hagglund			

I. GENERAL CONSIDERATIONS AND GUIDELINES

A relationship of trust and confidence between the employees of the West Brookfield Police Department and the citizens of the community is essential. 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.

The internal affairs function is important for the maintenance of this profession. 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.

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. If not appropriately addressed, they may adversely affect the officer's career, their family and their ability to function effectively as a member of the department. The department's community policing efforts may likewise be jeopardized.

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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 the protection of the public, the protection of the employee, the protection of the department, the removal of unfit personnel, and the correction of procedural problems.

II. POLICY

It is the policy of West Brookfield Police Department to investigate all complaints against the department or a member of the department. All complaints, regardless of the source of such complaints, to include those which are anonymous, will be investigated through a regulated, fair, and impartial internal affairs program. This program will determine whether such complaints are valid and take appropriate action based on that determination.

[52.1.1]

Submission of disciplinary records and complaints received by an agency to the POST Commission's Division of Standards: ¹ **[52.2.9, IA-01, IA-06]**

1. The agency shall within two (2) business days of their receipt of a complaint alleging the misconduct of an officer from a member of the public, from personnel at the agency, or from any other source, for all complaints that are of the type described in 555 CMR 1.01(1)(a) transmit a description of the written complaint and a copy of any written complaint to the division of standards, and provide the following information, if known, in a form to be prescribed by the commission.
2. Upon completion of the internal investigation, the head of the agency shall immediately transmit an investigation report signed by the investigator to the division of standards, in a form to be prescribed by the division of standards, which includes all required information as set forth by the division of standards.
3. Upon determining the final disposition of the complaint and final discipline to be imposed by the agency, if any, the head of the agency shall immediately transmit to the division of standards a final report in a form to be prescribed by the commission, which shall include all required information as set forth by the division of standards.

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4. If an officer resigns prior to the conclusion of an internal investigation by the agency or prior to the imposition of agency discipline, the head of the agency shall immediately transmit to the division of standards a report in a form to be prescribed by the commission, which shall include the minimum information as set forth by the division of standards.

III. DEFINITIONS

IV. PROCEDURES

The responsibility for supervising, conducting, coordinating, and maintaining the internal affairs function of the department lies with the Lieutenant or their designee, who will report directly to the Chief of Police. The department has established guidelines regarding categories of complaints to determine which will be handled and investigated as an internal affairs function or as part of routine discipline. **[52.1.3]**

1. The criteria for determining the categories of complaints to be investigated under the direction of the Lieutenant include, but are not limited to, allegations of corruption, brutality, use of excessive force, violation of civil rights, criminal misconduct, complaints against the department, and any other matter as directed by the Chief of Police. **[52.2.1(1)]**
2. Criteria for the assignment of an investigation to a Sergeant may include, but are not limited to, such offenses as alleged rudeness, tardiness, and minor cases of insubordination. In addition, complaints of minor violations shall be available to the POST Commission upon request. **[52.2.1(2)] [52.2.9(2-A)]**

INITIAL COMPLAINT RECEIPT AND NOTIFICATION [52.1.4]

The Sergeant shall be responsible for the efficient receiving, investigation, and complete recording of any complaint against department personnel involving routine discipline, as outlined above. The complaint and investigation shall be documented in the form of a memorandum by the Sergeant and forwarded to the Lieutenant. The memorandum should include any statements provided by the

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complainant and a written statement about the incident by the officer involved. Based on the outcome of the investigation the Sergeant may engage the involved officer in a counseling session or recommend training. **[52.2.2(1,2,3)]**

If the complaint involves a complaint about the department or a serious allegation such as corruption, brutality, use of excessive force, violation of civil rights or criminal misconduct, the case will be investigated by the Lieutenant. The complainant should be asked to fill out a Citizen Complaint Form and sign it. If the complainant refuses this should be noted. The form should then be attached to the Lieutenant's memorandum and forwarded to the Chief of Police. The Chief of Police may assign an outside mutual aid agency/private firm or other qualified personnel to conduct any investigation where a conflict of interest or perceived conflict of interests exists. **[52.2.2(1,2,3)]**

The utmost courtesy and cooperation should be extended to all citizens registering complaints or otherwise inquiring about complaint procedures, as the complainant is often tense, angry, emotional or upset, and the potential for hostility is great. No person should be denied an opportunity to register a complaint, nor should any such person be directed to return or call back later.

IMMEDIATE NOTIFICATIONS

If the substance of a complaint against an employee or the department is of a grave nature or is an accusation of a criminal offense and immediate action is deemed necessary, the Chief of Police shall be verbally notified forthwith by the Lieutenant. **[52.2.2(4,5)]**

STREET COMPLAINTS

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 their complaint should be directed to the Sergeant or Lieutenant.

ANONYMOUS COMPLAINTS

If a member of the department receives an anonymous complaint, it shall be reported to the Sergeant. The Sergeant will attempt to determine if there is any merit to the complaint based on the information received. The procedures set forth in this policy shall only apply if the Sergeant is able to find merit in the complaint.

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IMMEDIATE RESOLUTION OF A COMPLAINT

In some cases a complaint can be resolved to the complainant's satisfaction at the time by the Sergeant or Lieutenant. 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. The procedures set forth in this policy shall not apply if the complainant is satisfied after speaking with the Sergeant or Lieutenant. Under no circumstances, however, will a justifiable complaint be refused, delayed, or otherwise rejected if a citizen wishes to file a complaint.

RELIEF FROM DUTY

The Lieutenant or Sergeant may relieve any sworn or civilian personnel from duty for the balance of the shift if they determine that any person under their command is engaged in serious misconduct or not properly able to carry out their duties. Misconduct may include, but is not limited to, insubordination, refusal to perform duties, criminal offenses, or falsifying statements. In all such cases, the Chief of Police shall be notified as soon as possible and no later than the employee's next tour of duty. A written report shall be submitted to the Chief concerning such action. **[52.2.7]**

INTERNAL AFFAIRS INVESTIGATIONS

The Chief of Police will review all investigations completed by the Sergeant or Lieutenant and complaints forwarded to the internal affairs function. Any investigation that is determined to be unfounded or where counseling/training has addressed the complaint shall be filed in the officer's disciplinary file with no further action. In addition, the Lieutenant may cause a written reprimand to be issued and placed in the officer's disciplinary file.

If the Lieutenant determines that a completed investigation or a complaint forwarded to the internal affairs function could result in disciplinary action, as defined in the policy on Authority and Discipline, they shall oversee a further investigation under the internal affairs function. Personnel of any rank or assignment may be called upon to assist in carrying out this function as determined by the Lieutenant using the following procedures: **[52.2.2]**

1. The investigating officer shall be responsible for providing the Lieutenant with status reports on the progress of the investigation

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every seven (7) days. These reports shall contain all pertinent information relating to the progress of the investigation.

2. When an employee is officially notified that they have become the subject of an internal affairs investigation they will be issued a written statement of the allegations and the employee's rights and responsibilities relative to the investigation. **[52.2.5]**
3. The investigating officer should note in their report 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.

COMMENCEMENT AND COMPLETION

Any internal affairs investigation must be commenced immediately upon receipt of the complaint by the Lieutenant and must be completed within thirty (30) days.² **[52.2.3, IA-03]**

If extenuating circumstances preclude completion within thirty (30) days, the Lieutenant 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. If extenuation circumstances preclude completion within one (1) year, the above procedures will be followed in addition to authorization and approval by the POST Commission.

If the investigation is not completed within thirty days, the complainant shall be provided a progress report at appropriate intervals until the completion of the investigation. **[52.2.4(1), IA-05]**

INVESTIGATIVE SCOPE

An internal 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 if it has the potential to reflect discredit on the department.

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.

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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.

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.³ However, as discussed below, an employee may be compelled to answer questions narrowly drawn and related to their on or off duty conduct, and may be disciplined (including discharge) for failure to answer truthfully.

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.

All department employees, when requested by a superior officer, must respond fully and truthfully to all questions regarding their performance of official duties or their on-duty or 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 inquiries may be punished by appropriate disciplinary action, including dismissal from the department.

If the employee or their counsel or representative asks the official conducting the interrogation the precise repercussions (i.e., suspension, discharge, or the exact form of discipline) that will result if the officer fails to respond the official must specify it (If possible, the complete interview with an employee should be recorded with both audio and video).

TRANSACTIONAL IMMUNITY

When a department employee is ordered to submit a report or to answer questions under a threat of the penalty of discipline, that employee may be granted transactional immunity from criminal prosecution for any offenses to which the compelled testimony relates.

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

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grants "immunity from prosecution for offenses to which compelled testimony relates."⁴

If the questions specifically, directly, and narrowly relate to the employee's performance of official duties or their off-duty conduct which affects their fitness or ability to remain in the police service, and if such employee is informed that they will receive transactional immunity from criminal prosecution, they must answer or face disciplinary action, including dismissal from the department, for refusing to answer such questions.

In cases where criminal prosecution is not being sought, a written grant of transactional immunity may be obtained from the Attorney General's Office and the District Attorney's Office in the county where the incident occurred. An employee may decline to answer questions in a criminal investigation until such documentation is received.

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.

QUESTIONING

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; ⁵ however, a request for an attorney or a fellow employee from the same union to be present will be granted if the investigation is not thereby unduly delayed. The following guidelines pertain to employee questioning:

1. Except in unusual situations, any interview or questioning should take place during the employee's regular duty hours.
2. 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.
3. A department employee shall not be harassed or threatened during this period of questioning.

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INVESTIGATIVE TECHNIQUES

In conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods should be employed, consistent with legal requirements for the individual rights of the accused employee. Investigative methods may include:

1. An internal administrative investigation should be conducted with the same degree of professional competence as is devoted to a criminal investigation.
2. Upon orders of the Chief of Police or their designee, 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.
[52.2.6(A)]
3. 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 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.
[52.2.6(B)(C)]
4. A police officer's personal property, including their 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. ⁶
5. Department property furnished to the officer, including but not limited to desks, lockers, duty bags, or vehicles are subject to full search and inspection at any time for any reason
6. 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.
[52.2.6(D)]
7. A police officer may be compelled to be audio or video recorded.
[52.2.6(E)]

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8. Under the provisions of G.L. c. 149, s. 19B, a police officer 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. **[52.2.6(F)]**

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.

Even though a complaint is withdrawn, a full report of the investigation to date should be prepared for the Chief and their approval obtained for the termination or continuation of the investigation. Even though a complainant withdraws a complaint the investigation of the complaint may still proceed.

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 their complaint, is prohibited and will be treated most severely.

REPORT OF INVESTIGATION [52.2.8]

At the conclusion of any internal affairs investigation, a full written report shall be prepared under the direction of the Lieutenant, for submission to the Chief, which shall include the following: **[52.2.2]**

1. The original complaint report;
2. Any additional statements taken from the complainant or statements obtained from witnesses;
3. Any statements made or reports submitted by department employees;
4. A summary of all evidence gathered;
5. Any mitigating circumstances; and
6. An evaluation of the complaint and a definitive conclusion of fact as to whether each allegation made by the complainant was:
 - a. Sustained: The complaint was valid and supported by sufficient evidence;

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- b. Not Sustained: There was inadequate or insufficient evidence to either prove or disprove the complaint;
- c. Unfounded: The allegations were baseless and without foundation; or
- d. 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.

NOTIFICATIONS

Upon receipt of the report of investigation, the Chief should take further action as is necessary based upon findings in the particular case, to include:

1. 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, they shall be officially exonerated in writing.
2. Every person who has filed a complaint against an employee shall be notified promptly as to the receipt of their complaint, periodic status report, and final results of the investigation, by mail and personally if possible. **[52.2.4(1)]**
3. If a disciplinary hearing is deemed necessary, the complainant shall be notified that their testimony may be required at that time.

CONFIDENTIALITY

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 in the administrative office. A copy of the completed investigation summary will be kept in the file and will be the only source of public information about citizen complaints. In addition, the withholding of Officers' disciplinary records related to a misconduct investigation as a public records exemption is prohibited.⁷ At any time, WBPD shall allow the POST Commission's Division of Public Standards audit records related to complaints, investigations and investigative reports, and personnel records pursuant to the rules and regulations to be promulgated by POST. **[52.1.2, IA-02, REC-01]**

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LIAISON WITH DISTRICT ATTORNEY

If an internal affairs investigation results in a criminal charge being brought against a department employee, the Chief or Lieutenant shall notify the Office of the Worcester District Attorney, Attorney General, and/or United States Attorney.

¹ Per M.G.L. c. 6E, §, Law Enforcement Agencies

² Section 1 of MGL Chapter 6E of section 10 (h) of the “JEALE” ACT of 2020

³ *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).

⁴ Id.

⁵ *NLRB v. Weingarten*, 420 U.S. 251, 95 S.Ct. 959 (1975)

⁶ *Board of Selectmen of Framingham v. Municipal Ct. of City of Boston*, 373 Mass. 783, 369 N.E.2d 1145 (1977)

⁷ MGL Section 2, Chapter 253 of the Acts of 2020; G.L. c. 4 7(26)(c)