

Barre City Police Department

Barre, Vermont

Braedon S. Vail
Chief

ADMINISTRATIVE PROCEDURES

<u>Subject:</u>	<u>Number:</u>	<u>Effective Date:</u>
Internal Affairs - Complaints & Discipline	214	9/1/22

- Note:** These Rules & Regulations, Operational Policies and/or Procedures are for internal use only and does not enlarge a member's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with the respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.
- Policy:** The Barre City Police Department invites the public to share complaints regarding the conduct of members and the Department in general. All complaints, including those submitted anonymously will be received courteously and be investigated in accordance with the procedures described herein. The complaint disposition will be consistent with the obligation of providing equitable process for all parties involved. These procedures apply to all allegations of misconduct by members of the Police Department, whether occurring on-duty and off-duty.
- Purpose:** A relationship of trust between the Police Department and the community is essential to ensuring public safety. Complaints provide feedback into how the community perceives the Department, and information for management to make corrections, or implement positive action through operational, training and policy changes. 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, or the conduct of agency employees. 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 defensible discipline. The investigation of complaints also serves to protect members from unwarranted allegations and criticism for properly conducting their duties. Police officers and other members must be free to exercise discretion when taking action in a reasonable, lawful, and impartial manner without fear of reprisal. Therefore, it is important to establish a process that enables the Department to evaluate performance and initiate positive, corrective action while also protecting members from unwarranted criticism for properly discharging their duties.

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I. Definitions

- A. **Complaint** - A complaint is an allegation of misconduct made against the Police Department and/or specific member(s), regardless of assignment, sworn or non-sworn status, uniformed or non-uniformed responsibilities, management, supervisory or non-supervisory responsibilities.
 - **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 resolution for traffic citations or the parking ticket appeal form available on the website. However, allegations of police misconduct or bias related to the issuance of the citation or traffic stop may constitute a Complaint as defined above.
- B. **Serious Allegations of Misconduct** - Serious complaints or allegations of misconduct include but are not necessarily limited to, brutality, complaints that allege bias or prejudice, misappropriation of property, evidence or monies, other criminal acts, substance abuse, untruthful statements and/or intentional omissions.
- C. **Minor Allegations of Misconduct** - Minor complaints or allegations of misconduct are not enumerated in this directive, but include those allegations, which, if sustained would be appropriate for performance coaching, remedial training, or progressive discipline in accordance with the current agreement between the City of Barre, the Barre City Police Officers Association and the Fraternal Order of Police Lodge 004.
- D. **Brutality** - Brutality is considered the intentional excessive, unlawful or unjustified use of physical force.
- E. **Counseling** - Supervisory or performance counseling of subordinates is non-disciplinary corrective action. Supervisory counseling and coaching should be documented on a Job Observation Report and maintained in the supervisor's file for use in the performance evaluation process.
- F. **Oral Admonishment** – A spoken warning or indication of disapproval concerning a specific act, infraction, or violation of a policy or procedure that is usually given by the immediate supervisor and is noted on the Job Observation Record and/or included in the supervisor's file but does not become part of a member's personnel record.

- G. **Written Reprimand** - The letter documents the violation for inclusion into the officer's personnel file in accordance with the current agreement between the City of Barre, the Barre City Police Officers Association and the Fraternal Order of Police Lodge 004.
- H. **Unfounded** – The investigation of the complaint indicates that the acts complained of did not occur.
- I. **Non-Sustained** - The investigation failed to disclose sufficient evidence to prove or disprove the allegation.
- J. **Exonerated** - The incident did occur, but the actions of the accused were justified, lawful and proper.
- K. **Sustained** - The investigation disclosed sufficient evidence to prove the allegations of misconduct.
- L. **Policy Failure** - The incident did occur but there was a deficiency in Department policy, or the action of the Police Department or the member was consistent with Department policy; however, the investigation revealed a need for a revision, change, or correction in the policy/procedure.
- M. **Internal Affairs (IA)** – An administrative investigation into alleged violations of Department rules, policy or procedures directed by the Deputy Chief. The Chief of Police reserves the right to designate a person other than the Deputy Chief to lead an administrative investigation in the event of an actual or potential conflict of interest.

II. **Internal Complaint Processing**

The Deputy Chief, or alternate person designated by the Chief of Police is responsible for and supervises the investigation of all complaints or allegations of misconduct directed against members of the Barre City Police Department, reporting directly to the Chief of Police on all internal complaint matters.

- A. All complaints will be documented on a Citizen Complaint Form and forwarded to the Deputy Chief or alternate designee immediately upon receipt.
- **Exception** - any member of the Barre City Police Department desiring to file a complaint against another member of the Department will document the complaint on a memorandum and forward it to the Deputy Chief.
- B. The Deputy Chief or alternate designee will review all complaints against members of the Department and will determine the appropriateness of assignment to the internal affairs function, or reassignment to other supervisory personnel.
- C. The Deputy Chief or alternate designee, after consultation with the Chief of Police, will investigate all complaints involving allegations of corruption, brutality, misuse of force, breach of civil rights, criminal misconduct, and other matters at the direction of the Chief of Police whether occurring on or off-duty. Examples of allegations for investigation may include but are not limited to:
- Criminal Misconduct
 - Deliberate Failure to perform assigned duties
 - Deliberate Violation of policy and procedures

- Breach of Civil Rights
 - Excessive use of force or assault
 - Complaints may, upon consideration and/or review be investigated by an appropriate allied law enforcement agency or investigative group/person as determined by the Chief of Police.
- E.** The Deputy Chief may assign supervisors to investigate complaints that involve such matters as but not limited to; rudeness by a member, tardiness, insubordination, minor policy and procedural violations or other complaints that can be handled as a matter of supervisory counseling, training or progressive discipline and documentation.
- F.** The Deputy Chief or alternate designee is responsible for supervising the accuracy and integrity of all complaint investigations conducted by supervisors; and:
- Assigning of investigative due dates
 - Preparing and delivering all internal affairs correspondence
 - Maintaining records of all investigations concerning allegations of misconduct, and the confidentiality thereof.
- G.** The complexity, nature and seriousness of the allegation, including the totality of circumstances will determine at which level of supervision the investigation will be conducted.
- H.** The Department recognizes that there will be circumstances in which complainants merely seek an explanation and do not necessarily seek investigation of a matter. During these instances, supervisors will actively listen to the complainant, clarifying any questions about Police Department rules, policy, procedures, or applicable laws, etc.
- In such cases, nothing shall limit a supervisor from making further inquiry into the issues raised, or from taking or recommending appropriate performance counseling or discipline, as may be appropriate.
 - The results of these inquiries will be documented on a Job Observation Report and included in the member's supervisory file for use in the performance evaluation process.
- I.** Nothing precludes the Police Department from investigating allegations against any member(s) from whatever source consistent with law when it is determined that such investigation is in the best interests of the Department.

III. Initial Filing of Complaints

Anyone desiring to complain about a member of the Police Department in-person or by telephone will be referred to the highest ranking on-duty supervisor.

A. Citizen Complaints

Members of the public are encouraged to use the Citizen Complaint Form to document complaints alleging misconduct if the complaint is not otherwise resolved. Use of the Citizen Complaint Form is not a requisite for filing a complaint. As an alternative, members of the public may submit a

written narrative/statement electronically from the Department web site, or by postal mail about the event including the times, dates, location and name of the member(s). A photocopy of any written complaint will be given to the complainant as a receipt.

- All Complaints shall be documented in written form and forwarded to the Deputy Chief. If the complainant refuses to document the complaint and, the allegation if factual would constitute misconduct, the receiving member will document the complaint utilizing the Citizen Complaint Form and forward it to the Deputy Chief.
 - A complaint against a police officer alleging brutality in the execution of their duties should, if possible, include a written complaint which is duly sworn by the aggrieved person, a member of the aggrieved person's immediate family, by any person with firsthand knowledge obtained as a result of the presence at, and observation of, the alleged incident, or by the parent/guardian in the case of a minor child, before an official authorized to administer oaths as part of an affidavit.
- B. Complaints by Members of the Police Department** - Any member of the Police Department desiring to file a complaint against another member of the Department will document the identical information prescribed for a complaint by a member of the public on a memorandum and submit it immediately through the chain of command to the Deputy Chief.
- C. Anonymous or Uncooperative Complainant** - Anonymous complaints will be accepted, and every effort should be made to gain the cooperation of the complainant. By their very nature, many anonymous complaints are difficult to substantiate; this should not preclude a preliminary inquiry into the matter, and where possible, an investigation into the complaint will be made. The investigation will be terminated when it reasonably appears that no additional evidence can be obtained. The case will then be documented, and the subject, if known, may be informed of the nature of the complaint and, the result of the investigation.
- D.** Any member who takes retaliatory action against a complainant or witness shall incur appropriate disciplinary action. This does not prohibit the right of a member to avail him/herself of any legal or equitable remedy at their own expense.
- E.** The Deputy Chief will notify the Police Chief of all complaints against the Department or any of its members, to include police officers, supervisors. Complaints of a serious nature, such as those described in Section II, paragraph C of this directive, and others where there may be a question of agency liability, and those which may result in heightened community interest should be brought immediately to the attention of the Police Chief.
- Complaints regarding conduct as defined in Title 20 of Vermont Statutes Annotated, Chapter 151, Subchapter 2 "Unprofessional Conduct" (20 VSA § 2401) will ultimately be reviewed by the Chief of Police.
 - It will be the responsibility of the Chief of Police to apprise and review with the City Manager such complaints for conduct required to be reported to the Vermont Criminal Justice Council, and to make report to the Vermont Criminal Justice Training Council, as required by this statute.
 - Those complaints of a minor nature may be brought to the Chief of Police as soon as or once the initial facts are gathered.

- F. Complaints involving allegations against the Deputy Chief will follow the same process for initial filing and recording identified in this section but will instead be submitted directly to the Chief of Police for investigation/assignment. All complaints against the Chief of Police will be referred to and investigated by the City Manager.

IV. Notification Procedures

- A. Members of the Department have an affirmative duty to notify the Chief of Police when they, or another police officer or other member is involved in any of the following circumstances:
- Whenever a member, including a police officer shoots another person; or any discharge of a firearm or defensive weapon by an officer except for authorized target practice; or the killing of a dangerous or injured animal as authorized by Department rules and procedures.
 - When a member is charged with a traffic or criminal offense, or anytime there is an allegation of criminal activity involving a member where a police investigation is/has occurred regardless of the jurisdiction of occurrence.
 - When a police officer is the operator of a City vehicle involved in a traffic collision or other incident resulting in serious property damage, injury or death.
 - Any incident where a supervisor feels an immediate administrative investigation is necessary, or when otherwise directed by the Chief of Police.
- B. **Notifying Supervisor Responsibility** - When circumstances dictate that a notification of the Internal Affairs function is necessary (events listed above in Section A), the notification will be made by the highest ranking on-duty supervisor by direct contact with the Deputy Chief. Any doubt will be resolved in favor of making the notification. Once notification is made, the responsibility for the administrative investigation lies with the Chief.
- C. Generally, an internal or administrative investigation will **not** be completed until after a criminal investigation, if any, has concluded.
- The Chief may initially appoint an internal affairs investigator but has ultimate responsibility for insuring cooperation between the Police Department and other police agencies having responsibility for any criminal investigation into allegations of misconduct by any member of the Barre City Police Department.
 - Should the administrative or internal affairs investigation run concurrent to the criminal investigation, interrogations of accused members by an administrative investigator will be done independent of any criminal interrogation. Administrative investigators shall **not** involve themselves in the interrogation of an accused member by criminal investigators.

V. Investigation of Complaints

- A. The Deputy Chief will use the following guidelines when determining who will be assigned a complaint for investigation, whether the complaint will be handled at the supervisory level for

complaints of a minor nature, or by a specific investigator in cases involving serious allegations of misconduct.

- Type of complaint (seriousness and complexity);
- Source of the complaint;
- Number of individuals involved (accused and/or witnesses);
- Whether the accused members are assigned to the same squad or unit;
- Jurisdictional limitations;
- Underlying indications of graft, corruption or other serious misconduct;
- Any related matter that would dictate assignment.

B. In addition, the following principles will serve as guidelines for the Deputy Chief when determining investigative responsibility:

- Discipline is a command responsibility, and
- Complaints should be investigated and resolved at the lowest possible level when possible.

C. Internal Investigations Log

The Chief will maintain an Internal Investigations Log and record all complaints against members that are investigated. There will be no “Rap Sheet” or any other type of record and/or documents kept by any member of the Police Department regarding an internal administrative investigation. The Internal Investigations Log includes the following information:

- The name of accused member(s).
- Nature of complaint
- I.A. control number.
- Date complaint received.
- Assigned investigator.
- Date of disposition.
- Disposition - Conclusion of Facts

D. The Deputy Chief will provide periodic investigative status reports to the complainant.

E. Internal/Administrative Interrogation

Once a violation is suspected and the investigation focuses on a particular member, the member under investigation shall, prior to any interrogation, be informed in writing of the nature of the investigation and, all rights afforded to him/her under Department rules and, where applicable the current agreement with the Barre City Police Officers Association and Fraternal Order of Police Lodge 004.

- At the request of the member under interrogation, they shall have the right to be represented by counsel or any other employee representative of their choice, and at their own expense, who shall be present at all times during the interrogation, unless waived by the member.
- If the member under interrogation is under arrest or is likely to be placed under arrest as a result of the interrogation, they shall be completely informed of all his/her rights prior to the commencement of the interrogation.

- A member under investigation may waive any or all rights provided under Department rules and the current agreement with the Barre City Police Officers Association and Fraternal Order of Police Lodge 004; providing that any such waiver of rights is in writing.
- During the investigation, the accused member may be ordered by the investigator to submit a statement and/or answer all questions that specifically relate to the subject matter of the investigation, regardless of the relative rank or supervisory status of the investigator.
- The interrogation shall be conducted at a reasonable hour, preferably at a time when the member is on duty, unless the seriousness of the investigation is of such a degree that immediate interrogation is required.
- Interrogation sessions shall be for reasonable periods of time and timed to allow for any personal necessities and rest periods as are reasonably necessary.
- The member interrogated may not be threatened with transfer, dismissal or punishment.
- Nothing prevents the Police Department from requiring a member under investigation to submit to breath or urine tests for alcohol or controlled dangerous substances in accordance with 21 V.S.A. Chapter 5, Subchapter 11, or interrogations which specifically and narrowly relate to the subject matter of the investigation.
 - Nothing shall prevent the Police Department from commencing any action which may lead to a punitive measure as the result of a member's refusal to submit to breath or urine tests for alcohol or controlled dangerous substances, or interrogation after having been ordered to do so by the Department.
 - The results of any breath or urine tests to determine the presence of alcohol or controlled dangerous substances, or an interrogation as may be required by the Department under this section are not admissible or discoverable in any criminal proceedings against the member when he/she has been ordered to submit thereto.
- Nothing will prevent the Department from requiring the member under investigation to submit non-testimonial evidence consistent with state and federal laws, to include but not necessarily limited to the submission of photographs or participation in a line-up if the evidence is material to a particular offense being investigated. The results of any such non-testimonial evidence test may not be used against the member in any criminal proceedings.
- A member may **not** be required or requested to disclose any item of personal property, income, assets, source of income, debts or personal/domestic expenditures, including those of any family or household member, unless such disclosure is required by state or federal law.
- A member against whom an allegation has been made may, at any time during the investigation, request to take a polygraph examination.

F. Internal Reports and Case Findings

Unless granted an extension in writing by the Deputy Chief, all investigations are to be completed

within forty-five (45) days of assignment. Upon completion of the investigation, the investigator will forward the report in a sealed envelope to the Deputy Chief for review and processing. All internal investigation reports will include:

- The allegations.
 - A statement of facts arranged in chronological order.
 - The investigative findings or conclusion of facts classified as one of the following:
 - Unfounded
 - Non-Sustained
 - Exonerated
 - Sustained
 - Policy Failure
- G.** Should the Deputy Chief question the findings or actions of the investigator, in consultation with the Chief, they may:
- Review the case with the investigator to point out a discrepancy in supportive facts, and
 - Identify portions of the report that may require editing because of non-supportive critical statements, and/or
 - The Deputy Chief may direct the investigator to continue the investigation.
- H.** When the Deputy Chief completes the review, he/she will review the investigative results and disciplinary recommendation with the Chief of Police. Final disposition will be made by or, as directed by the Police Chief.
- I.** An investigation shall result in no punitive action where the member's conduct was exonerated or when there is not substantial evidence of misconduct found, or
- In those cases where a violation is indicated, the member will be notified in writing by memorandum from the Chief of Police; and
 - The complainant will be advised in writing of the investigation's outcome after final disposition.
- J.** Reports of internal investigations, including witness statements are considered confidential personnel records and will be maintained in a secured area. Authorization for access to these reports can only be granted by the Chief of Police.

VI. Disciplinary Action

Disciplinary action against a member may only be taken by, or at the recommendation of the Chief of Police. If, after reviewing the investigative report and case file, the Chief determines there is a reasonable basis to believe that the member against whom the allegation was made committed an act of misconduct or improper conduct, and that the type or degree of misconduct or improper conduct is such as to warrant disciplinary action being taken if the allegation were proved, the Chief shall present the charges to the accused member.

- A.** Disciplinary proceedings against a member commence with the service of charges upon the accused member. Charges shall be served personally upon the member by the Chief of Police, another manager or supervisor. The member who serves the charges shall certify in writing as to the date and time of service.
- B.** Whether the member admits or denies the charges, they may request a hearing before the City Manager, during which they may be represented, may present evidence and testimony on their own behalf, and may examine and cross examine witnesses.
- Members denying the charges and seeking a hearing before the City Manager shall be provided with a copy of the original complaint, a copy of all statements and other evidence compiled during the investigation not less than five (5) days before the hearing.
 - Those members represented by the Barre City Police Officers Association and Fraternal Order of Police Lodge 004 will receive a formal proceeding to be held in accordance with the current agreement between the City of Barre and the Barre City Police Officers Association and Fraternal Order of Police Lodge 004.
- C.** Within five (5) business days of receipt of administrative charges, the accused member must admit or deny the charges. A member who admits the charges against them may waive the hearing, and
- Accept the disciplinary action as offered by the Chief of Police and waive his/her right to a hearing, or
 - Within three (3) days, submit a written statement to the City Manager for their consideration of mitigating or other circumstances related to the offer of discipline.
- D.** In the event the accused elects a hearing, or the recommended discipline by the Chief of Police is an unpaid suspension or termination, the City Manager will schedule the hearing as described in paragraph B of this section. After the hearing has closed, the City Manager will determine what, if any disciplinary action to take against the member and issue that decision in writing.
- E.** Should the City Manager conclude that an unpaid suspension or termination is appropriate, the member will be provided with a written summary citing the reason(s) for the unpaid suspension or termination, the effective date of such action, and if appropriate, a summary of remaining leave, and the status of health, retirement or any other benefits following termination.
- F.** Appeals of disciplinary action against those members represented by the Barre City Police Officers Association and Fraternal Order of Police Lodge 004 will follow the Grievance Process outlined in the current bargaining agreement with the City of Barre.
- G.** A volunteer or any other member serving their initial probation may be summarily dismissed by the Chief of Police at any time without a hearing for any reason, or no reason provided it is not an otherwise illegal reason.

VII. Summary

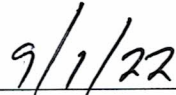
- A. Annually, the Deputy Chief shall prepare a statistical summary of complaints and internal investigations, submitting the summary to the Chief of Police by January 30th. This report shall not identify any member by name.
- B. The summary report shall contain information relating to:
- the number of investigations by category of offense
 - the adjudication of those investigations
 - any other pertinent information

VIII. Cancellation

This written directive cancels and replaces **Barre City Police Department Operational Policy titled “Internal Affairs/Citizen Complaints” dated January 8, 2019** and cancels, replaces and supersedes any other directive in conflict therewith.

AUTHORITY:



Braedon S. Vail, Chief of Police

September 1, 2022

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