

# **Waltham Police Department**

## **CHAPTER 52B**

### **INTERNAL AFFAIRS**

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***Accreditation Standard #'s: 52.1.1, 52.1.2, 52.1.3, 52.2.2, 52.2.3, 52.2.4-A, B, C, 52.2.5, 52.2.6-A, B, C, D, E***

#### **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, whether on duty or off duty, shall be completely investigated in order to ensure the integrity of the department and its members. [52.1.1]

**CRIMINAL OR SERIOUS MISCONDUCT:** Complaints that shall be considered serious include, but are not limited to:

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

#### **NOTIFICATION OF INTERNAL AFFAIRS:**

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 their designee upon the receipt of complaint against the agency or its employees which could warrant an Internal Affairs investigation. [52.2.1-2] 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 [52.2.2-1, 2, 3, 4, 4A, 5]. 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. [52.2.2-5]

## **PROCEDURE:**

### **1. INTERNAL AFFAIRS FUNCTION:**

- a. **INTERNAL AFFAIRS INVESTIGATION:** For serious or criminal cases of misconduct, the Chief of Police shall refer the matter to the Commander of the Detective Division or their designee for assignment to an internal affairs investigator. All cases of serious misconduct will be deemed an internal affairs investigation. Once deemed an internal affairs investigation the provisions set forth in this chapter shall apply.
- b. **ESTABLISHMENT AND AUTHORITY:** The Internal Affairs function shall be under the command of the Captain of the Investigations division. In this function, the Commanding Officer of the Unit shall report directly to the Chief of Police, who will assign other personnel to the unit as necessary. When performing the function of internal affairs, the internal affairs investigator has the authority to report directly to the Chief of Police. An internal affairs investigator is any superior officer with specialized training in internal affairs matters. [52.1.3-1, 2]

### **2. OBJECTIVES:** The primary objectives of an internal affairs investigation are:

- a. **PROTECTION OF THE PUBLIC:** The public has the right to expect efficient, fair and impartial law enforcement. Therefore, any misconduct by department personnel must be detected, thoroughly investigated and properly adjudicated to assure the maintenance of these qualities.
- b. **PROTECTION OF THE EMPLOYEE:** Employees must be protected against false allegations of misconduct. This can only be accomplished through a consistently thorough investigative process.
- c. **PROTECTION OF THE DEPARTMENT:** The department is often evaluated and judged by the conduct of individual members. It is imperative that the entire organization not be subjected to public censure because of misconduct by a few of its personnel. When an informed public knows that its police department honestly and fairly investigates and adjudicates all allegations of misconduct against its members, this public will be less likely to feel any need to raise a cry of indignation over alleged incidents of misconduct.
- d. **REMOVAL OF UNFIT PERSONNEL:** Personnel who engage in serious acts of misconduct, or who have demonstrated they are unfit for law

enforcement work, must be removed for the protection of the public, the department, and the department employees.

- e. **CORRECTION OF PROCEDURAL PROBLEMS:** The department is constantly seeking to improve its efficiency and the efficiency of its personnel. Occasionally, personnel investigations disclose faulty procedures that would otherwise have gone undetected. These procedures can be improved or corrected.

3. **GENERAL DUTIES & RESPONSIBILITIES:** It is the duty and responsibility of the Internal Affairs Investigator to:

- a. Investigate complaints of misconduct or mistreatment charged against members of the department or the agency uncovered from internal or external sources.
- b. Keep the Chief of Police informed of the progress of current investigations, including the submission of verbal status reports every (7) seven days. Complainants will be notified that their complaint has been received, unless the complaint has been made anonymously.
- c. Keep the complainant informed of the progress of the investigation [52.2.4-1]. When an investigator is assigned to a case the complainant shall be notified as soon as possible [52.2.4-2A, B]. The investigator will meet with or speak to the complainant, explain the process, including the anticipated duration. The complainant shall be given the investigator's name and a means of contacting the investigator if necessary. [52.2.4] The investigator should maintain verbal contact with the complainant and provide periodic status reports to keep them updated, especially in the case of a lengthy investigation. [52.2.4-2C]
- d. Endeavor to complete all investigations within (30) thirty days and to submit all written reports and records to the Chief of Police for their review and appropriate action. Any extension of this time limit must be authorized by the Chief of Police, with the reasons for the extension explained [52.2.3-1].
- e. Communicate with complainant(s), if any, the result of completed investigation(s) after approval of the Chief of Police. [52.2.4-2D]
- f. Recommend new or revised training programs or changes in department policies, procedures and rules and regulations in order to reduce the causes and frequency of complaints against members.

- g. Conduct an investigation into any situation where any person has been killed or seriously injured by an officer, whether the officer was on/or off-duty at the time of the incident.
- h. Investigate all instances where an officer discharges their firearm (other than training) to determine whether the use of the weapon was in accord with department policy.
- i. Maintain a secure and confidential file. Upon completion of an investigation all original documents and reports shall be submitted to the Detective Division Commander or their designee for filing. [52.1.2-4]

**4. CRIMINAL OR SERIOUS MISCONDUCT BY A DEPARTMENT MEMBER:**

An internal investigation may inquire into a member's on-duty conduct or to their off-duty conduct, if such inquiry is reasonable and related to the member's performance of duty, or if such conduct affects the member's fitness or ability to perform their duties, or if such conduct would reflect unfavorably upon themselves or the Waltham Police Department.

After a preliminary investigation into any allegations of serious police misconduct, the Chief of Police or their designee, will determine, before initiating any internal affairs interview of the accused member, whether the purpose of the interview is to obtain a statement to be used in a subsequent criminal prosecution or in a departmental disciplinary proceeding. Whether criminal or disciplinary, the member shall receive a written statement of the allegations as well as their rights and responsibilities relative to the investigation. [52.2.5-1, 2] In addition to the procedures stated herein, all rights and procedures listed in the current collective bargaining agreement shall apply.

**LIAISON WITH PROSECUTORIAL STAFF:** When appropriate, the department will establish and maintain liaison with the prosecutorial staff of any competent jurisdiction for advice and guidance in the investigation of any employee's alleged criminal misconduct.

- a. **CRIMINAL PROCEEDING:** If it is determined, after the preliminary investigation, that the allegations against an employee could result in a criminal prosecution then the accused employee must be granted all constitutional and statutory rights to which every citizen is entitled. The member will be given the rights and warnings required by the "Miranda" decision and they cannot be discharged or otherwise penalized solely for invoking the right to remain silent as guaranteed by the Fifth Amendment to the United States Constitution or Article Twelve of the Massachusetts Declaration of Rights. However, a member may be discharged or penalized

for refusing to answer questions once the member has been granted transactional immunity from criminal prosecution.

- b. **NON-CRIMINAL PROCEEDING:** If it is determined, as a result of the preliminary investigation, that allegations made against a member could result in departmental disciplinary action only, the accused member is entitled to a fair and objective investigation of the charges made. An internal affairs investigator will conduct these investigations. The Chief of Police or a designated superior officer may order any sworn member to answer questions regarding their performance or non-performance of any official duty. Officers may also be required to answer questions regarding off-duty conduct if such inquiry is reasonably related to the officer's performance of their duties, or to their ability and fitness to continue in service as a police officer, or would reflect unfavorably upon themselves or the Waltham Police Department. The accused member must respond fully and truthfully when so questioned. Any failure of the member to answer, after being informed that their answers cannot be used against them in a subsequent criminal proceeding, may be punished by a disciplinary action up to and including dismissal from the Department.
  
- c. When an employee is notified that they have become the subject of an Internal Affairs Investigation, they shall be given copies of the following forms as appropriate: **[52.2.5]**
  - 1. **FORM 52-2:** A written statement listing the allegations shall be given to the member before questioning begins. **[52.2.5-2, 3A]** If the Chief determines that disclosure to the affected employee might jeopardize the investigation, a copy of the notification of allegations may be withheld from the employee.
  - 2. **FORM 52-3 or 52-3S:** Members shall be given a copy of their “Bill of Rights” which will inform them of their rights and responsibilities relative to the investigation. **[52.2.5-3B, C]**
  - 3. **FORM 52-4:** If, as a result of a preliminary investigation and/or the nature of the allegations, it is anticipated that a member’s statements could be used against them in a criminal action, the member shall be given a copy of this form. The member shall be afforded all constitutional rights regarding such matter.
  - 4. **FORM 52-5:** If it is not anticipated that criminal action will result against a member, they will be given a copy of this form before questioning begins.

If at any time during questioning it becomes apparent that although criminal action was not anticipated prior to questioning, because of responses received during such questioning, criminal action might now result, and questioning must immediately stop.

Before further questioning resumes, the member must now be given a copy of FORM 52-4.

The use of any compelled statement which leads to evidence of criminal wrong-doing shall be subject to the limitations imposed by the United States Constitution and all applicable federal and state case law and administrative decisions.

- d. **RIGHT TO A UNION REPRESENTATIVE:** Prior to being questioned in an internal affairs investigative matter which may result in discipline or criminal charges, members shall be informed of their right to request the presence of a union representative during such questioning in accordance with the rights established by the decisions of the Massachusetts Labor Relations Commission. If a member requests the presence of a union representative during questioning, such questioning will not begin until the member has been provided a reasonable opportunity to confer privately with the union representative. The union representative shall be permitted to be present during the entire period of questioning. The status of the union representative during the period of questioning shall be limited to that of an observer and advisor to the employee.
- e. **INVESTIGATIVE TECHNIQUES AND METHODS:** In conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods will be employed, consistent with legal requirements, case law and all necessary concern for the individual rights of the accused member. Included among the methods and techniques that may be employed are:
  - 1. **EXAMINATIONS:** Upon orders of the Chief of Police or designee, a member may be required to submit to a polygraph, medical or laboratory examination, at the department's expense. [52.2.6-1A, F] This examination must be specifically directed and narrowly related to a particular internal affairs investigation being conducted by the department.
  - 2. **IDENTIFICATION PROCESS:** A member may also be required to be photographed, or to participate in a lineup. The member may also be required to submit to audio and/or video recordings as part of this process. [52.2.6-1B, C, E]

3. **FINANCIAL DISCLOSURE:** A member may submit a financial disclosure statement when the actions are material to a particular internal investigation. Such submissions shall only be conducted in a manner, which is consistent with applicable federal and state case law, statutes, and administrative decisions. [52.2.6-1D]
- f. **FAILURE OF MEMBER TO COOPERATE:** The failure of a member to fully cooperate in an internal investigation, upon the specific order of the Chief of Police or their designee, may subject the member to disciplinary sanctions to be specified at the time of questioning, including dismissal from the Department.
- g. **WITHDRAWN COMPLAINT:** If, during the process of an internal investigation, the complainant withdraws the complaint, every effort shall be made to ensure that this decision is made voluntarily. The complaint may still be investigated if deemed appropriate by the Chief of Police without the cooperation of the original complainant.
- h. **NOTIFICATION:**
1. **CHIEF OF POLICE:** At the conclusion of an Internal Affairs investigation into allegations of police misconduct, a full written report, along with FORM 52-6, will be submitted to the Chief of Police. The conclusive finding or findings 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]
- a. **PROPER CONDUCT:** The incident did occur, but the actions of the accused were justified, lawful, and proper.
- b. **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.
- c. **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.

- d. **INSUFFICIENT EVIDENCE:** The investigation yielded insufficient proof to confirm or to refute the allegation.
  - e. **UNFOUNDED COMPLAINT:** The investigation disclosed that the allegation is demonstrably false or there is no credible evidence to support the allegation.
- 2. **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 their designee.
  - 3. **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.
  - 5. **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], [52.1.2-3]
  - 6. **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.
  - 7. **COMPLAINTS TO BE HANDLED BY LINE SUPERVISORS:** The Chief of Police or designee may assign minor complaints to be investigated and addressed by the line supervisors of an employee. These include but may not be limited to alleged rudeness, tardiness or insubordination. [52.2.1-1]
  - 8. **POST COMPLIANCE:** [52.2.9] The Massachusetts Peace Officer Standards and Training (POST) Commission was established as part of the criminal justice reform enacted in Chapter 253 of the Acts of



2020. Instructions for filing a complaint are available to the public on the City of Waltham – Police Department public website.

9. **AUDIT:** The Waltham Police Department will allow access to the POST Commission's Division of Police Standards to audit all records related to complaints, investigative reports, and personnel records pursuant to the rules and regulations to be promulgated by the POST. **[52.1.2-7]**
10. **RECORDS:** The Waltham Police Department prohibits the withholding of records related to a misconduct investigation as a public records exemption. **[52.1.2-2]**
11. **NOTIFICATION AND REPORTING:** The Commanding Officer of the Investigations Division will notify POST of any serious or criminal complaints which the Complaints of minor violations will be available to the commission upon request, or under any policy that may be established by the commission. **[52.2.9-2A]** This will occur within two (2) business days of receipt of the complaint. **[52.2.9-1, 2B]**

Upon completion of the internal investigation the head of the agency shall immediately transmit an investigative report signed by the investigator which includes all information as set forth by the division of standards. **[52.2.9-2C]**

If the complaint is related to minor matters, a category that may include but is not limited to, discourtesy and basic work rules violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions, refer the complaint for internal resolution as determined by the Commanding Officer – Internal Affairs Division.

Upon determining the final disposition of the complaint and final discipline to be imposed by the agency, if any, the head of agency shall immediately transmit a final report to the division of standards. **[52.2.9-2D]**

If an officer resigns prior to the conclusion of an internal investigation by the agency, the head of agency shall immediately transmit a report to the division of standards. **[52.2.9-2E]**

The agency shall complete an internal affairs investigation into officer misconduct and issue a final disposition within one year of receiving a complaint or notice of a complaint from the commission.

The agency may request an extension from the commission upon showing good cause [52.2.3-2].