



COTTAGE CITY POLICE DEPARTMENT

GENERAL ORDER

SUBJECT: PERSONNEL AND ADMINISTRATIVE COMPLAINTS

NEW REVISED RESCINDS

APPROVED: *GM*

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ACTING CHIEF OF POLICE

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I. POLICY

The integrity of the Cottage City Police Department depends on the personal integrity and discipline of all employees individually and collectively. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct by the agency or its employees. The policy of the Cottage City Police Department is to investigate fully each complaint or allegation of misconduct against an employee of the Department.

II. PURPOSE

The purpose of this General Order is to establish an internal affairs function which the Department considers important for the maintenance of professional police conduct and the overall integrity of the agency. The Department will respond expediently and responsibly to allegations of misfeasance, malfeasance, and nonfeasance by employees, and to complaints about the Department's response to community and individual needs.

III. GENERAL

A. Department employees are often subject to intense pressure in the performance of their duties. An employee must remain neutral in situations that are tense, fast-moving, and emotional. Situations frequently result in words, actions, and reactions that are misunderstood or confusing, which become the foundation for a complaint. Resolution of a complaint and inquiry into the circumstances prompting it requires a procedure that is exacting, fair, and consistently applied.

- B. Police officers, like all citizens, are protected by the guarantees of the U.S. Constitution and are further protected by the Law Enforcement Officers' Bill of Rights (LEOBR) Public Safety Article §3-101et. seq. of the Annotated Code of Maryland as amended.
- C. Employees are expected always to give truthful responses to questions related to the performance of their official duties and their fitness to hold public office.
- D. Copies of the Citizen Complaint form will be kept on hand in the report form file cabinet and will be offered to a citizen with an explanation of its use whenever any citizen asks for information on how to make a complaint against the Department or an employee of the Department.
- E. All complaints made against the Department or its members shall be investigated, including anonymous complaints.

IV. CLASSIFICATION OF COMPLAINTS

A. Administrative

Complaints initiated internally against an employee by another Department employee.

B. Personnel

Complaints made by the public or other persons outside the Department against an employee.

V. DEFINITIONS

A. Brutality

Brutality is considered the use of excessive or unjustified physical force by an officer in the exercise of official duties.

B. Complaint

A complaint is an allegation of misconduct made against an employee(s) of the Department.

C. Exonerated

The incident did occur, but the actions of the accused were justified, lawful, and proper.

D. Minor complaints

Minor complaints are not enumerated in this General Order, but include those allegations, which if sustained, would be appropriately disciplined through the imposition of summary punishment or use of the Remedial Action Form.

E. Not sustained

The investigation failed to disclose sufficient evidence to prove or disprove the allegation.

F. Serious Allegations

Serious complaints include, among other acts, physical brutality, complaints which allege racial, ethnic, sexual or other types of prejudice, misappropriation of monies, or untruthful statements.

G. Sustained

The investigation disclosed sufficient evidence to prove the allegations of misconduct.

H. Unfounded

The investigation of the complaint indicates that the acts complained of did not occur.

VI. INTERNAL AFFAIRS FUNCTION

A. Cottage City Police maintains an internal affairs function for the purpose of creating a process to ensure the integrity of the agency.

B. The Chief of Police is responsible for the internal affairs function and may assign a supervisor specific duties and responsibilities on a case-by-case basis.

C. The goal of internal affairs is to ensure that the integrity of the agency is maintained through an internal system by which objectivity, fairness, and justice are ensured by an impartial investigation and review.

VII. INTERNAL AFFAIRS ACTIVITIES

- A. Allegations of employee misconduct shall be investigated appropriately and adjudicated promptly.
- B. The function of internal affairs includes these activities:
 1. Recording, registering, and controlling the investigation of complaints against employees.
 2. A written record will be made and maintained by the Chief of Police or his designee of all complaints against the Cottage City Police Department and its employees. The written record will consist of a permanent log maintained as a part of the Internal Affairs/Administrative Inquiry files. The log will include, but not be limited to:
 - a. Date;
 - b. Employee's name;
 - c. Complainant's name;
 - d. Type of complaint;
 - e. Investigator's name;
 - f. Administrative Inquiry or Internal Affairs designation;
 - g. Assigned control/file number;
 - h. Final disposition.
 3. Handling and/or supervising and controlling the investigation of alleged or suspected misconduct within the Department.
 4. Maintaining the confidentiality of the internal affairs investigation and records.
 5. Ensuring that the investigation is consistent with the Annotated Code of Maryland, Public Safety Article §3- 101,et. seq., inclusive, entitled, "Law Enforcement Officers' Bill of Rights."

6. The Chief of Police will acknowledge receipt of each complaint by letter to the complainant.
7. The Department will maintain close liaison with the Officer of the State's Attorney for investigations involving allegations that involve alleged criminal conduct on the part of any employee. In matters involving civil liability with the Town's Attorney will also be maintained.

VIII. COMPLAINT CATEGORIES

- A. The type and nature of a complaint shall determine whether it can be handled and resolved as an Administrative Inquiry or more formally as an Internal Affairs case.
- B. Not all complaints can be categorized automatically. All employees are required to exercise good judgment and common sense when they are made aware of a complaint. The following types of complaints are examples of those which are categorized as "formal" which will be handled as internal affairs cases or "informal", which may be resolved at the supervisory level as an administrative inquiry.
 1. Formal complaint
Allegations of:
 - a. Brutality;
 - b. Misuse of force;
 - c. Breach of civil rights;
 - d. Criminal misconduct;
 - e. Any complaint which will likely result in disciplinary action.
 2. Informal complaint Allegations of:
 - a. Failure to take appropriate police action;
 - b. Poor demeanor displayed by an employee;
 - c. Tardiness;

- d. Insubordination;
 - f. Property damage accident.
3. Complaints against the Department or its employees that are categorized as "formal" require immediate notification of the Chief of Police.
 4. Complaints against the Department or its employees that are categorized as "informal" do not require the immediate notification of the Chief of Police.

IX. RECEIPT OF COMPLAINTS

- A. Citizens will be supported in bring forward legitimate complaints about employee conduct. Their complaints will be received courteously and handled efficiently. All personnel will cooperate with the resolution of a citizen complaint as required by established procedures.
- B. Complaints, despite their nature, can be lodged in person, by mail, or by phone any time.
- C. Anonymous complaints will be accepted and will be investigated to the extent possible.
- D. Every effort will be made to facilitate the convenient, courteous, and prompt receipt and processing of citizen complaints.
- E. An employee of the Department, who interferes with, discourages, or delays the making of complaints will be subject to disciplinary action.
- F. An employee receiving a citizen complaint through the U.S. mail or other mail service will place correspondence in a sealed envelope and forward it to the Chief of Police, who will determine investigative responsibility.
- G. Complaints received by telephone, by a Police Clerk or other employee, will be courteously and promptly referred to the Chief or the supervisor on duty. If these officials are not available, the caller's name and phone number will be taken and advised that their call will be promptly returned.
- H. The member receiving a complaint by telephone will immediately initiate a confidential memorandum to the Chief noting the date/time it was received, the date/time it was referred to the supervisor or the Chief and a brief description of the complaint.

I. Complaints will not normally be accepted more than 30 days after the alleged incident, except:

1. When the act complained of is alleged brutality, in which case a complaint will be accepted up to 90 days after the incident.

NOTE: "A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint be duly sworn to by the aggrieved person, a member of the aggrieved person's immediate family, or by any person with firsthand knowledge obtained as a result of the presence at and observation of the alleged incident, or by the parent or guardian in the case of a minor child before an official authorized to administer oaths. An investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken unless the complaint is filed within 90 days of the alleged brutality." (Public Safety Article §3-104 (c) of the Annotated Code of Maryland) This does not preclude the Department from initiating an investigation to review the extent of the use of force used in effecting an arrest. (MSP v Resch 65 M D.APP 167, 499 A.2d 1303 1985)

2. When the act complained of is a criminal violation, in which case the Criminal Statute of Limitations will prevail.

3. When the complaining person can show good cause for not making the complaint earlier.

X. RESPONSIBILITY FOR HANDLING COMPLAINTS

A. All employees of the Department are charged strictly with the responsibility for receiving courteously and willingly all complaints that may be lodged against the Department or its employees.

B. Any complaint regarding a Department member is to be referred initially to the Sergeant or the Chief of Police as appropriate. If those officials are not available, the person receiving the complaint shall explain to the complainant the Department's procedures for filing a complaint and receive the complaint to be forwarded to the appropriate official.

C. The person receiving a complaint will record in a preliminary written report any conditions bearing on the accuracy of credibility of a complainant.

1. The conditions include apparent evidence the complainant is under the influence of intoxicants or drugs, is suffering from a mental disorder, or other condition requiring medication.
 2. Comment will also be made on the physical condition of the complainant, if appropriate, specifically noting any visible marks or injuries relative to the allegation. The visible marks or injuries shall also be documented by Polaroid photographs taken by the receiving employee and attached to the preliminary report.
 3. A copy of the written complaint of the incident and photo copies of all associated police reports, charging documents, etc., will be provided to the Chief of Police or his designee by 0830 hours the following work day. Original reports will be forwarded via the normal chain of command.
- D. Employees shall make every effort to resolve all complaints fairly and equitably. All complaints shall be documented properly by the investigating supervisor and referred to the Chief of Police. The written memorandum shall summarize the circumstances surrounding the complaint, the names, addresses, and phone numbers of the persons involved, and the disposition or recommended follow-up actions.
- E. In the event the complaint cannot be resolved to the satisfaction of the complainant by the employee's supervisor or the complaint involves alleged serious Departmental rules and regulations violation(s) or criminal misconduct by the employee, the supervisor shall refer the complaint to the Chief of Police through the chain of command.
- F. A complaint may be referred directly to the Chief of Police if there is reasonable cause to believe an individual in the chain of command is materially involved in the complaint.

XI. PROCEDURES

- A. The Chief of Police is responsible for:
1. Reviewing complaints and determining whether the matter will be investigated as an Administrative Inquiry case or as an Internal Affairs case.
 2. Assigning the person who will conduct the investigation under the provisions of the Law Enforcement Officers' Bill of Rights as provided in Public Safety Article §3-104 of the Annotated Code of Maryland as amended.

3. Ensuring that the Investigator invokes the provisions of the Law Enforcement Officers' Bill of Rights and the Internal Affairs procedures, if the Administrative Inquiry reveals a serious violation which may result in disciplinary action.
 4. Maintaining the appropriate confidentiality of the investigation.
 5. Providing the investigating officer with the reporting requirements for the case. Normally, an investigation must be complete within 30 days with status reports provided every 7 days to the Chief of Police. An extension may be granted by the Chief of Police in cases in which extenuating circumstances exist.
 6. Determining whether an accused officer will be reassigned, relieved from duty, or suspended pending disposition of the case.
 7. Determining the final disciplinary action based on the investigation, and if applicable the recommendations of a trial board in accordance with the Law Enforcement Officers' Bill of Rights.
- B. Administrative inquiry procedures
1. Complaints where it is probable that no formal disciplinary punitive action will be taken, i.e., first tardiness, PDA-minor negligence, etc., will usually be assigned to the employee's immediate supervisor.
 2. The investigating officer will prepare and deliver written notice to the employee or employees against whom a complaint is made at the earliest time there is reasonable cause to believe a violation of rule, regulation, or procedure occurred.
 3. Every employee will cooperate fully with the investigating officer(s), answering fully and truthfully any question about the incident under investigation. An employee can be ordered to answer. Failure to respond or to respond fully and truthfully is grounds for disciplinary action up to and including dismissal.
 4. Written statements will be taken from an accused officer, from complainants and witnesses when they are helpful or desirable in arriving at sound conclusions. Statements need not be in the form of questions and answers. They may be in the form of a report. They may be tape recorded.

5. The investigator of an Administrative Inquiry will forward the completed investigation to the Chief of Police. The investigator may recommend the type of non-disciplinary action to be taken to the Chief of Police who will make the final determination of non-disciplinary action in accordance with the Law Enforcement Officers' Bill of Rights.

C. Internal affairs procedures

1. Internal Affairs procedures will be followed in any complaint where it is probable that disciplinary action will be involved.
2. The investigating officer will prepare and deliver written notice to the employee or employees against whom a complaint is made at the earliest time there is reasonable cause to believe a violation of rule, regulation, or procedure occurred.
3. Every employee will cooperate fully with the investigating officer(s), answering fully and truthfully any question pertaining to the incident under investigation. An employee can be ordered to answer. Failure to respond or to respond fully and truthfully is grounds for disciplinary action up to and including dismissal.
4. Written statements will be taken from an accused officer, from complainants and witnesses when they are helpful or desirable in arriving at sound conclusions. Statements need not be in the form of questions and answers. They may be in the form of a report. They may be recorded.
5. At the time employees are notified that they are the subject of an Internal Affairs investigation, the investigating officer will provide the employee with a written notice of allegations and of the employee's rights and responsibilities.
6. In addition to interviews of the complainant and employee, the investigator may require other activities. These activities will be in accordance with the Law Enforcement Officers' Bill of Rights as provided in Public Safety Article §3-104 (a).

"This subtitle does not prevent any law enforcement agency from requiring a law enforcement officer under investigation to submit to blood alcohol tests, blood, breath or urine tests for controlled dangerous substances, polygraph examinations or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law enforcement agency from commencing any action which

may lead to a punitive measure as a result of a law enforcement officer's refusal to submit to a blood alcohol test, blood, breath or urine tests for controlled dangerous substances, polygraph examination or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol tests, blood, breath or urine test for controlled dangerous substances, polygraph examination or interrogation, as may be required by the law enforcement agency under this subparagraph are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the administrative hearing."

7. Other medical and laboratory examinations may be administered. Psychiatric and psychological examinations may be ordered if there is a question concerning fitness for duty. The costs of the examinations will be paid by the City.
8. Photographs may be taken of employees for use in a photo line-up in the conduct of investigations. Employees may also be required to stand in a line-up for viewing by citizens for the purpose of identifying an employee who is the subject of an investigation.
9. "A law enforcement officer may not be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his family or household) unless that information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, or unless such disclosure is required by State or Federal law." Law Enforcement Officers' Bill of Rights, Public Safety Article §3-103 (c) of the Annotated Code of Maryland as amended.
10. If an employee is under arrest or is likely to be placed under arrest as a result of the investigation, the employee will be informed of his/her Constitutional rights when the investigation reaches an accusatory stage and may result in a criminal proceeding.
11. The Chief of Police will be advised by the investigating officer of any new information in an investigation which may require:

- a. Reassigning an accused officer to ensure the officer receives closer supervision or separation from the public or other officers;
- b. Relief from duty or immediate suspension of an accused officer;
- c. Charges under the criminal law or traffic article of the Annotated Code of Maryland.

D. Arrest warrants/charging document

1. When it is necessary to ask for an arrest warrant/charging document for an employee of the Department, the Chief of Police will be notified without delay.
2. If a complainant seeks a warrant/charging document, the Sergeant and/or the Chief will consult with the complainant and ask for a delay to allow a Department investigation.

If the complainant declines to permit a delay, the Chief of Police will ask the State's Attorney for a delay to allow the Department investigation.

3. If the warrant/charging document has already been issued, the employee having the warrant/charging document will notify the Sergeant, who will notify the Chief of Police and State's Attorney before executing the warrant/charging document.

XII. INVESTIGATIVE FINDINGS

- A. When an investigation has concluded, a "conclusion of fact" for each allegation will be clearly stated and will identify the following concerns when applicable:
 1. Proper conduct;
 2. Improper conduct;
 3. Policy failure;
 4. Insufficient evidence;
 5. Unfounded complaint.

- B. Based on recommendations and the results of the investigation, the Chief of Police will classify completed investigations of personnel complaints as:
 - 1. Unfounded;
 - 2. Exonerated;
 - 3. Not Sustained;
 - 4. Sustained.

XIII. EMERGENCY SUSPENSION

- A. Emergency suspension is a compulsory leave authorized by the Chief of Police or in his absence, the Sergeant. An emergency suspension is intended for use in providing time to investigate, establish facts, and reach a decision concerning an employee's actions in those cases where it is determined the employee should not continue work pending a decision. This provision is authorized with the caution that much thought and deliberation is given before taking such action. The existing facts and circumstances should be weighed carefully.
- B. Emergency suspension may be a temporary administrative action due to an employee's physical or psychological fitness for duty, or an action pending disposition of an Internal Affairs investigation.
- C. The Sergeant and/or the Chief, after a preliminary inquiry, have full authority to and will place an employee in their command on official leave and suspend his police powers when that employee is:
 - 1. Charged with a criminal offense;
 - 2. Charged with operating a motor vehicle while under the influence of alcohol or drugs.

This action is taken to completely remove the employee from contact with the public and is not punitive.

- D. The senior supervisor and/or the Chief, after a preliminary inquiry, have full authority to and will place an employee in their command on official leave when that employee causes or is responsible for, whether accidental or deliberate:
 - 1. The taking of a human life;

2. The serious injury of a person.

This action is not punitive and has two purposes:

- a. To remove the officer from unnecessary contact with the public to allow him/her sufficient time to recover from the incident.
 - b. To provide the Department sufficient time to conduct a preliminary investigation.
- E. The senior supervisor and/or the Chief, after a preliminary inquiry, have full authority to and will place an employee in their command on official leave when that employee has been involved in a traumatic incident. These incidents are:
1. When the actions of a Department employee, whether accidental or deliberate, result in the death or serious injury of a person.
 2. When members are present at the death or serious injury of a Department employee.
- F. Once an employee is placed on official leave and the Chief of Police is notified of the incident, the Chief of Police or his designee shall determine if an emergency suspension is warranted.
1. Public Safety Article §3-112, of the Annotated Code of Maryland as amended.

"(b) Emergency suspensions with pay may be imposed by the Chief when it appears that the action is in the best interest of the public and the law enforcement agency.

(1) If the officer is suspended with pay, the chief may suspend the police powers of the officer and reassign the officer to restricted duties pending a determination by a court of competent jurisdiction with respect to any criminal violation or final determination by an administrative hearing board as to any departmental violation.

(2) Any person so suspended shall be entitled to a prompt hearing.

(c) Emergency suspension of police powers without pay may be imposed by the Chief if a law enforcement officer has been charged with the commission of a felony.

(3) Any person so suspended shall be entitled to a prompt hearing."

2. If the Chief or his designee imposes suspension, he shall notify the employee promptly in writing of that decision and inform him that he is entitled to a prompt hearing.
 3. If the employee requests a hearing, the Chief will ensure that a hearing is scheduled as soon as possible and that the employee is notified in writing of the date and time of that hearing.
- G. The following procedure shall be followed when it becomes necessary to suspend an employee:
1. Any suspension must be fully documented, before implementation, stating:
 - a. Beginning date;
 - b. The reasons for the suspension;
 - c. Description of action to be taken regarding the suspension;
 - d. The timetable for taking additional action.
 2. The documentation shall be signed by the employee's supervisor and the Chief of Police.
- H. An employee who refuses to obey a direct order issued in conformance with the Department's written rules and regulations may similarly be relieved from duty by the Sergeant and/or senior officer on duty who will recommend discipline to the Chief of Police.
- I. Employees who are relieved/suspended from duty as a temporary administrative measure will be placed on official leave.
1. Officers placed on suspension or placed on official leave pending serious disciplinary action shall deliver their shields, cap plate, service weapon, and police identification cards and folder to the Sergeant at the end of their last active tour of duty.
 2. Upon surrendering these items, the employee is relieved of any future responsibilities for direct enforcement action until he returns to duty. Authority to carry a personally owned firearm, as a police officer, is also rescinded.
- J. The suspension of any employee shall be concluded within a reasonable time, considering all circumstances that have made the suspension necessary.

XIV. DISPOSITION OF RECORDS/FINDINGS

- A. The Chief of Police will notify the complainant in writing as to the disposition of the case. If the notification to the complainant will be delayed more than 30 calendar days, an interim report will be sent.
- B. Completed investigations will be maintained in Internal Affairs files in a secure locked file in the Chief's office.
- C. Internal Affairs files are confidential files subject to examination only with the express prior permission of the Chief of Police. Internal Affairs files will be surrendered for examination by persons or authorities outside the Police Department only in response to appropriate orders of a court with jurisdiction.
- D. Nothing in this order will prevent the Chief of Police from issuing such summary reports of incidents or a summary of an incident as may be required to inform the community.
- E. Annually, by January 31, the Chief of Police will review this file and publish a statistical summary of the types and numbers of complaints.
- F. Copies of the statistical summary will be made available to employees and the media.

XV. EXPUNGEMENT OF RECORDS/FINDINGS

- A. Public Safety Article §3-110 of the Annotated Code of Maryland states: "A law enforcement officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:
 - 1. The law enforcement agency investigating the complaint has exonerated the officer of all charges in the complaint, or determined that the charges were not sustained or unfounded; and
 - 2. 3 years have passed since the findings by the law enforcement agency."
- B. The file of a case resulting in a "not guilty" finding at a hearing board will also be expunged at the officer's request.
- C. If an officer wishes to have his record(s) expunged, he must forward a memorandum directly to the Chief of Police.

- D. If the statutory requirements for expungement are met, the Chief of Police will:
 - 1. Expunge the file;
 - 2. Notify the officer within thirty (30) days by returning directly to him a copy of his memorandum marked with the date the expungement was completed.
- E. If the expungement requirements are not met, the Chief of Police will:
 - 1. Notify the officer by returning a copy of his memorandum within thirty (30) days and indicating the expungement request will not be granted.
 - 2. The reasons for the expungement request denial will be outlined in the memorandum.
- F. In both situations, the original of the expungement request (with the action taken indicated on it) will be placed in the case file.
- G. The method of expungement will be destruction (shredding) except in the following circumstances:
 - 1. The file contains names of two or more accused officers and charges against one or more of the officers were sustained. The entire file will then be placed in limited access. Any reference to those officers who were exonerated, or who had charges placed that were unfounded or not sustained will be obliterated (marked over).
 - 2. Entries in the Internal Affairs log will be obliterated.