	ANDOVER POLICE DEPARTMENT GENERAL ORDER	Number: M1107 Page: 1 of 9 Distribution: All
Title: COMPLAINTS & INTERNAL INVESTIGATIONS		Section: Administration
Issued: 05/11/2010	Effective: 05/19/2010	Revised: 05/23/2016
Rescinds: All Previous	Amends:	
CALEA References: Chapter 52		
Review: Semi-Annual	Authority: Chief Michael A. Keller	

I. Purpose

The purpose of this General Order is to inform all employees and the public of procedures for the acceptance, processing and investigation of complaints or allegations of misconduct against the Police Department or any of its employees; to insure that the investigation of alleged misconduct is fair, impartial and complete; to safeguard the rights of the suspected or accused; and to exonerate the innocent.

II. Policy

The Department must provide a formal internal system for the processing of complaints relative to Department operations, policies and procedures, and the conduct of police personnel. The character and the reputation of the Department rest on an adequate program of fair and impartial investigations. All complaints against the Department or its employees will be investigated including anonymous complaints (52.1.1).

Primary objectives of any complaint investigation are:

A. **Protection of the public –** The public has a 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 expectations.

B. **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 one of its members.

C. **Protection of the City –** The Department is a direct representative of the City. The City also needs protected from public censure because of misconduct by one of its employees.

D. **Protection of the Employee –** Employees must be protected against false allegations of misconduct. This can only be accomplished through a consistently thorough investigative process.

E. **Correction of procedural problems –** The Department is constantly seeking to improve its efficiency and the efficiency of its personnel. Internal investigations occasionally disclose faulty policies and procedures that would otherwise have gone undetected. These procedures can then be improved or corrected.

III. Definitions

A. **Complaint:** For the purposes of this policy, a complaint shall be defined as an act of expressed dissatisfaction, which relates to the Andover Police Department operations, policies and procedures, or conduct of department personnel.

B. **Public Offense:** A violation of local, state or federal law with a reasonable potential for prosecution.

IV. Regulations

A. All members of the Department shall fully cooperate with any member of the agency assigned by the Chief of Police to conduct an administrative internal investigation [E].

B. No member of the Department involved in an administrative internal investigation who, after being given the Garrity warning (APD FORM 2 & 3) shall refuse to answer, without counsel present, questions related to the performance of his/her official duties or about his/her fitness for duty. [F].

C. No member of the Department shall refuse to submit to medical or laboratory examination, pursuant to and in concurrence with all legal requirements, and provide a sample of blood, breath or urine, after being directed by the Chief of Police to submit to said examinations [F].

D. Employees who are potential witnesses in an internal investigation will not discuss the content of that investigation with other potential witnesses or department members prior to the conclusion of the investigation, nor attempt to solicit information for or from another employee involved, or attempt to influence a witness [C].

E. No member of the Department, nor any complainant from within the Department, nor the person accused, shall inappropriately disclose the identity of anyone who reports a suspected violation or who participates in a related investigation [D].

F. No member of the Department shall refuse to receive any complaint that may be lodged against the Department or any employee [A].

G. Retaliation in any form against an individual who in good faith reports a violation of regulations or of law, even if the report is mistaken, or assists in the investigation of a reported violation, is itself a serious violation of this General Order and of law. Any employee responsible for reprisals against anyone for reporting in good faith known or suspected violations of law or regulation, or for assisting in an investigation of such a violation, will be subject to disciplinary action, up to and including termination. This section, however, shall not apply to disciplinary action directed to any employee who knowingly or with reckless indifference to the truth makes a false report or provides false information [D].

V. Procedures

A. Acceptance and Referral of Complaints (Reporting)

1. All members of the Andover Police Department are charged with the responsibility for courteously and willingly receiving any and all complaints, including anonymous complaints that may be lodged against the Department or an employee (52.1.1).
2. Whenever a complaint is received, whether in person or by telephone, the individual Department member will first attempt to contact an on-duty supervisor to handle the receipt of the complaint. If the complaint is against a first line supervisor, the Duty Chief will be contacted to handle the receipt of the complaint. If the complaint is against a member of the command staff, the Chief of Police will be contacted to receive the complaint.
3. If during other than normal business hours and there is no supervisor available, the Duty Chief will be contacted and apprised of the situation.
4. If the Duty Chief chooses not to respond, or is unable to be contacted, the individual Department member will take the complaint and forward it directly to the Chief of Police.
5. Alleged or suspected violations of misconduct shall be reported directly to the Chief of Police by the Watch Commander, on-duty supervisor or department member who first receives information of the alleged violation or complaint (52.2.2).
6. Upon receipt of a complaint, the staff member taking the complaint will brief the Chief of Police or his designated representative as soon as possible (52.2.2)(Exceptions to this would be conduct such as, but not limited to, tardiness, inattention to duty, improper reports, unsatisfactory performance, abuse of equipment, improper wearing or care of uniform and equipment, which will be immediately addressed by the supervisor observing or being notified of such conduct (52.2.1a)).
7. Complaints will be accepted from any source, whether made in person, by mail or by telephone.
8. Whenever possible, a complaint shall be reduced to writing by the complainant utilizing the Andover Police Department's Complaint Form. When a complaint is received by letter, email, or fax, that document itself will be the complaint document.
9. Anonymous complaints will be handled in the above described manner and evaluated by the Chief of Police to determine the extent to which they should be investigated (52.1.1).

10. Procedures for filing a complaint against the department or one of its members shall be made available to the public by posting the procedures on the Department's web site (52.1.4).
11. Procedures for filing a complaint against the department or one of its members shall be made available to departmental personnel by distribution of this General Order pursuant to General Order M1105 Written Directives System (52.1.4).

B. Authority and Responsibility

1. Upon receipt of a complaint of misconduct, the Chief of Police shall do one of the following:
   a. Assign an individual supervisory staff member or other department member to conduct the investigation;
   b. Refer the complaint to the Investigations Commander for investigation;
   c. Consider requesting an outside law enforcement agency conduct the investigation if the matter involves possible criminal activity or has the potential for severe damage to the department's reputation.
   d. Order no investigation when it is known the complaint is unfounded.
2. The Chief of Police has the authority to amend, modify, reject or approve the recommendation of any investigator(s), supervisor(s) or other staff member.
3. The final decision with regard to discipline or the pursuing of criminal charges against an employee rests with the Chief of Police.
4. Department members assigned by the Chief of Police to conduct an internal investigation shall have the authority to interview any member of the Department and to review any record or report of the Department relative to the assigned investigation.
5. Members assigned to an internal investigation will come under the direct authority of the Chief of Police, and all matters relative and pertaining to the investigation will be reported directly to the Chief of Police (52.1.3).
6. Supervisors may temporarily relieve an employee from duty with pay when a supervisor personally observes conduct that is extremely serious in nature and creates actual or potential harm to the officers or to others; when a supervisor has cause to believe that an employee is unfit for duty due to psychological or physical reasons; or when a supervisor believes it is in the immediate best interest of the City, the Department or the community (52.2.7).
   a. If a supervisor relieves an employee from duty, the supervisor will immediately contact the Duty Chief. The Duty Chief will immediately notify the employee's chain of command, up to and including the Chief of Police.
   b. Officers being relieved from duty under the authority of this General Order must surrender their duty weapon, badges, building keys, identification card and commission cards to their supervisor prior to ending their tour of duty.

Civilian employees must surrender their identification cards and building keys prior to ending their tour of duty.

c. The supervisor giving the relief order and the employee being relieved shall report to the Chief of Police at 9 a.m. on the next business day unless otherwise directed by a command officer.

C. Informal Complaints

1. If the complainant does not desire a formal complaint processing, or the complaint has been brought by Departmental members, the following types of complaints may be handled by the involved employee's immediate supervisor:
   a. Complaints of demeanor
   b. Neglect of duty
   c. Traffic infractions
   d. Minor rules and regulations, or policy and procedure violations (52.2.1a).
2. All informal complaint investigations shall be documented and, upon completion, forwarded to the Chief of Police for control and statistical purposes, and final discipline decisions.

D. Formal Complaints

1. Upon accepting a formal complaint from a citizen, the Chief of Police is responsible for notifying the complainant in writing to verify that the complaint has been received and an investigation will be conducted (52.2.4a).
2. The following types of formal complaints will be forwarded to and handled by the Investigations Commander (52.2.1b):
   a. Excessive Force
   b. Discrimination
   c. False arrest/Imprisonment
   d. Unlawful search/seizure
   e. Shootings or weapons complaints
   f. Sexual harassment
   g. Drug or alcohol use or intoxication on duty
   h. Alleged perpetration of a criminal act
   i. Violations of civil rights
   j. Internal theft/dishonesty
   k. Misconduct, on or off-duty, which brings the department into disrepute or reflects discredit upon the employee as a member of the department
   l. Any other investigation as directed by the Chief of Police
3. Department employees involved in a formal complaint shall be notified of the complaint and their rights and responsibilities through a written memorandum from the Chief of Police (52.2.5). The employee's supervisory chain of command shall also be notified of the ensuing investigation.

4. Upon receipt of notification, the employee(s) may be instructed to submit a written report setting forth all the details of the incident resulting in the complaint. The report will be delivered to the department staff member assigned to conduct the investigation, as indicated in the notification, no later than 24 hours after the employee is notified (EXCEPTION: See Conduct of Investigation of a Public Offense). The report shall contain the following:
   a. All pertinent information pertaining to the allegation
   b. A list of all officers and witnesses known
   c. Any other information that would be of assistance in the investigation

E. Conduct of Investigation

1. A thorough, complete and impartial investigation will be conducted by the Department members assigned by the Chief of Police.
2. The investigation may include the taking of formal, signed statements, gathering and preservation of physical evidence and any other information relevant to the investigation.
3. All employee interviews shall be recorded and interviews with complainants should be recorded whenever possible.
4. Whenever an employee is not willing to answer questions concerning matters which may or may not result in a criminal prosecution against him, he shall be given the "Miranda-Garrity" or "Garrity" Warning, whichever is applicable (APD FORMS 2, 3 or 4).
5. Pursuant to and in concurrence with all legal requirements, the Chief of Police may, at Department expense, require an employee to submit to a medical or laboratory examination and provide a sample of blood, breath or urine, when such examination is specifically directed and narrowly related to a particular investigation (e.g. determining alcohol and/or illicit drug use by an employee) (52.2.6a).
6. Pursuant to and in concurrence with all legal requirements, the Chief of Police may require an employee to be photographed; to participate in a line-up; submit to a financial disclosure statement; submit to a polygraph, psychological and/or physical examination, provided that such actions are material to a particular investigation and such actions are specifically directed and narrowly related to said investigation (52.2.6b,c,d,e).
   a. Whenever a complaint from a citizen is the basis for the investigation, the matter is non-criminal, and no corroborating information has been discovered, officers shall not be required to submit to a polygraph examination unless the citizen also submits to a polygraph examination which is specifically directed and narrowly related to the complaint (52.2.6e).

7. When the search of an employee's home, auto or other premises is necessary, the employee shall be given the opportunity to sign a waiver of search form. If the employee refuses to sign the waiver, the search aspect of the investigation will be in accordance with the Kansas Criminal Code and the Kansas Code of Criminal Procedure.
8. No statement, comment, writing, suggestion, gesture or innuendo that suggest lenience, prosecution, no prosecution or disciplinary action will be made or directed to an employee being investigated by any person assigned to the investigation.
9. All internal investigations should be completed within 30 days of receipt of the complaint (52.2.3).
10. Status reports regarding the progress of the investigation shall be submitted to the Chief of Police at seven-day intervals until the investigation is complete.
11. If for any reason the investigation cannot be completed within the allotted time, the investigating member shall request an extension from the Chief of Police (52.2.3).
12. The Chief of Police will provide the complainant a written update if an investigation of a formal complaint from outside the department exceeds 30-days (52.2.4b).

F. Conduct of Investigation of a Public Offense

1. At the outset of an investigation or at any time in the course of investigating a complaint of misconduct when it appears that an employee has committed a public offense, the procedure listed below will be included in the investigation process.
   a. The suspected employee shall be afforded every safeguard of his/her rights whether outlined in this General Order or not.
   b. It shall not be taken for granted by investigators that the suspected employee is aware of his/her rights through police experience, nor shall the employee be expected to waive any rights because of their employment by the Department.
   c. At the outset of an investigation when the employee is suspected of committing a public offense, the employee shall not be directed to submit a report as outlined earlier in the policy.
   d. When an investigation ceases to be a general inquiry and begins to focus on a particular aspect, the Miranda Warning will be given before any interrogation commences (See APD FORM 4).
   e. If the employee agrees to interrogation, a departmental rights form will be completed.
   f. When a suspected employee does not wish the inquiry be extended to interrogation, the interrogation will cease.

g. When a suspected employee requests his/her lawyer to be present, no interrogation will take place until the lawyer is present.

G. Conclusion of Investigation

1. An objective investigation will be made into the complaint, and at its conclusion a report will be forwarded to the Chief of Police for review.
2. The report will include a recommendation as to the findings based on a conclusion of fact, but not to punitive action to be taken or that criminal charges be filed.
3. The report will classify the findings, based on a conclusion of fact, as one of the following (52.2.8):
   a. Unfounded – The investigation conclusively proved that the act complained of did not occur. This finding also applies when an individual employee named in the complaint was not involved in the act, which may have occurred.
   b. Exonerated – The act which provided the basis for the complaint or allegation occurred; however, the investigation revealed that the act was justified, lawful and proper.
   c. Not Sustained – The investigation failed to disclose sufficient evidence to clearly prove the allegation made in the complaint or to conclusively disprove such allegation.
   d. Sustained – The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
   e. Sustained Against Policy – The investigation revealed a faulty policy and/or procedure.
4. The Chief of Police shall review and approve each formal investigation and may, at his/her discretion, make a new and separate finding as to appropriate action.
5. Any investigation disapproved by the Chief of Police shall be returned to the investigating member for required action necessary for approval.
6. The Chief of Police will notify, in writing, the complainant and the suspected employee(s) of the results of the investigation upon its conclusion (52.2.4c).
7. In cases where the conclusion of fact is "Sustained Against Policy," the Chief of Police will issue a Special Order amending the applicable General Order as necessary. The Special Order will remain in effect until the applicable General Order is formally amended pursuant to the procedures in General Order M1105.

H. Disposition of Investigation Results

1. The Chief of Police will impose discipline as prescribed and outlined in General Order M1209 Disciplinary Procedures.

I. Investigative Complaint Files

1. The Chief of Police will maintain a comprehensive central complaint file on complaints, whether investigated by a supervisory staff member, a member of Special Services or any other member of the department.
2. In order to maintain the confidentiality of Investigative Complaint Files, access to the files within the Department will be restricted and they will be stored in a secure location as determined by the Chief of Police. Only persons with a need to know the content of the files, based on participation in the investigative or discipline process will be allowed to examine those documents. Access shall be granted only by order of the Chief of Police (52.1.2).
3. The member accused shall have the right to inspect and request copies of the Investigative Complaint File of the investigation. All records, reports, statements and information contained in the file are confidential and the accused member may only use the information in a grievance.
4. Except per court order, or unless specifically authorized by the Chief of Police, no portion of an investigative file shall be given to, or maintained by, anyone outside the department.
5. The Chief of Police shall compile annual statistical summaries, based upon records of complaint investigations, and provide the same to the Governing body of the City of Andover, Kansas. The statistical summary will be made available to the public and to employees by including it in the department's annual report and posting it on the department's web page (52.1.5).