



# PROCESS FOR POLICE DEPARTMENT DISCIPLINE AND SELECT BOARD REVIEW

**General Order Number: 34.3**

**Effective Date: June 7, 2017**

## **I. PURPOSE:**

The purpose of this policy is to encourage and enhance accountability and public confidence in, and cooperation with, the Police Department through the establishment of formal procedures for acting upon allegations of misconduct by officers or of inappropriate policies.

All allegations of misconduct shall be construed as "complaints" and shall be processed as hereinafter described.

All complaints of misconduct of officers shall be investigated in an efficient, fair, thorough, and timely manner, showing equal concern for the rights of both civilians and officers. All investigations of complaints shall strictly follow the guidelines in this policy unless there is a good reason to deviate from these guidelines and such deviation does not compromise the fairness, completeness, and reliability of the investigation. If there is a deviation from these guidelines, the reason for such deviation shall be stated in the investigation report.

## **II. OBJECTIVES:**

### **1. 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.

### **2. 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 the 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 police 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.

### **3. PROTECTION OF THE EMPLOYEE:**

Employees must be protected against false allegations of misconduct. This can only be accomplished through a consistently thorough investigation process.

#### **4. REMOVAL OF UNFIT PERSONNEL:**

Personnel who engage in serious acts of misconduct or who have demonstrated that they are unfit for law enforcement service must be removed for the protection of the public, the Department and other police officers.

#### **5. CORRECTION OF PROCEDURAL PROBLEMS:**

The Department is continually seeking to improve its efficiency and the efficiency of its personnel. Occasionally, personnel investigations uncover or disclose faulty procedures that would otherwise have gone undetected. These procedures can then be improved upon or corrected.

### **III. PROCEDURES:**

#### **1. RECEIVING COMPLAINTS**

**A.** Any person having a complaint against an officer or policy of the Police Department may register such complaint in person, in writing on a Civilian Complaint Form or otherwise, or by telephone, as follows:

**1.** To the Office of Professional Responsibility (hereinafter referred to as the "IAO") or, if the IAO is unavailable, to the highest-ranking superior officer available at the Police Station exclusive of the Chief ("Officer in Charge"), who shall forward the complaint to the IAO as soon as possible.

**2.** To the Select Board's Office at Town Hall. The Select Board's Office shall forward the complaint as soon as possible to the IAO. If the complainant reports to the Select Board's Office, the complainant shall be informed of the following:

**a.** The IAO, or another ranking officer designated by the Chief, is available to be present at the complainant's interview.

**b.** The complainant shall also be given the option of recording their statement.

**c.** The complainant may decline both A and B and give a statement to a representative of the Select Board's Office only.

**3.** Submit complaints in writing and on-line via the Department's web site, which complaints shall be forwarded as soon as possible to the IAO.

**B.** A complaint may be resolved to the complainant's satisfaction immediately by the IAO/or other supervisor taking such complaint. In such a case, this type of resolution shall be reported in writing by the IAO/or supervisor taking the complaint and submitted to the Chief of Police (and to the IAO, if the person taking the complaint is not the IAO), and if possible, acknowledged in writing by the complainant. Some situations where a complaint may be immediately resolved are the following:

1. The incident is clearly not of a serious nature, or arises from a misunderstanding or lack of knowledge of the law or of limitations in a police officer's authority.
2. The complainant declines to participate in the formal complaint process. Under no circumstances shall a complaint be delayed, rejected or refused if the complainant wishes to initiate a formal complaint.

When a supervisor is unable to resolve a complaint to the satisfaction of the complainant, that supervisor must explain the procedure by which the complainant can file a formal complaint.

**C.** All Town employees shall render prompt, courteous assistance to any person wishing to register a complaint. Any employee who is informed by a civilian of information that could be construed as a complaint shall immediately refer the complainant to the IAO or, if the IAO is unavailable, to the Officer in Charge, who shall forward the complaint as soon as possible to the IAO.

**D.** The IAO or, if the IAO is unavailable, the Officer in Charge shall observe the following procedures and take the following actions relative to receiving a complaint:

1. If the complaint is made in person, provide a private area in which to receive the complaint. If necessary, the employee shall offer the complainant transportation so that they may make the complaint in person.
2. The complaint may be taken over the telephone.
3. Ascertain the nature of the complaint.
4. If the complainant is in person, advise them of the procedures to be followed in processing their complaint, including the complainant's option of registering such complaint with the Select Board's Office, anonymously, and to be accompanied by a representative of their choosing during the interview, and provide

the complainant (if in person, but in any event no later than five business days after the filing of the complaint) with a copy of the Civilian Complaint Form and a brochure explaining the steps that will be followed in the complaint process.

5. If the complaint unquestionably alleges only Class C issues (see III(3)(C) below), the IAO/Officer in Charge shall briefly explain the Town policies in question, and offer to initiate an investigation pursuant to this policy only if the complainant, after such explanation, chooses to proceed with the complaint in accordance with this policy.
  6. If it is the Officer in Charge who receives the complaint, the Officer in Charge shall forward the complaint to the IAO as soon as possible for investigation and processing pursuant to this policy.
- E.** All complaints, including anonymous or third party complaints, shall be processed in the same manner so long as there is sufficient information to warrant an investigation.
- F.** Any officer who has information or evidence of another officer's misconduct shall convey it to the Chief or to the IAO.
- G.** Although the complaint shall be received, it shall not be further processed if received more than six months after an alleged incident, unless either the Chief or a majority of the Select Board finds extraordinary or compelling circumstances, such as Class A complaints that appear conducive to a productive investigation notwithstanding the passage of time or newly available evidence.
- H.** The IAO, as soon as practicable, shall notify the Chief of Police verbally or in writing of all complaints in the nature of Class A and Class B complaints against departmental employee(s).

## **2. CIVILIAN COMPLAINT FORMS**

- A.** To the extent possible, all complaints shall be taken on an official Civilian Complaint Form.
- B.** The IAO or, in the event the IAO is not available, the Officer in Charge who takes the complaint shall:
1. Attempt to obtain all information sought on the form, to the extent available to the complainant, along with any other information which could potentially assist in a subsequent investigation.
  2. Ask the complainant to specify any information included in the complaint that the complainant considers private and wishes the Department to

maintain confidentially, to the extent doing so is permissible under the law.

3. If the identity of the accused officer is not certain, facilitate a fair identification procedure. If a description, together with intradepartmental investigation, does not identify an officer, the complainant shall be given a prompt opportunity by the IAO to view up-to-date photographs of any officers who had an opportunity to participate in the alleged incident, said photographs to be inserted in a reasonable array.
  4. If the complainant alleges a physical injury caused by misconduct of an officer, attempt to document and verify such injury. The complainant shall be encouraged to seek further documental verification of such injury. Any such verification or encouragement shall be noted on the Civilian Complaint Form.
- C. Complainants who are interviewed are entitled to have a representative of their choosing present with them during their interview.
  - D. The complainant shall be given an opportunity to read, and then amend, the Civilian Complaint Form. The complainant shall then be asked to sign the Civilian Complaint Form. If they are unwilling to sign it, the unwillingness shall be noted on the form and the complaint shall be processed in conformity with this policy.
  - E. The complainant shall immediately be given a copy of the completed Civilian Complaint Form and a brochure explaining the steps that will be followed in the complaint process.
  - F. If the complaint is made by telephone or otherwise in a manner other than in person, a copy of the completed Civilian Complaint Form and the brochure shall be mailed by the IAO to the complainant along with a request that the complainant make any necessary corrections to the statements contained on the form and sign and return one copy of the latter in an enclosed, addressed, stamped envelope.
  - G. Any such completed and returned Forms shall be given directly to the IAO.
  - H. The IAO/Officer in Charge taking the complaint shall ascertain that the complainant understands the subsequent procedures as summarized in the brochure.

### 3. CLASSES OF COMPLAINTS & CONFIDENTIALITY

- A. **Class A:** allegations against an officer which, if true, could be construed as "serious", including excessive use of force; malicious and illegal arrest; unreasonable deprivation of individual rights; biased conduct or behavior based

on a person's disability, ethnic origin, gender, race, religion, sexual orientation, age, economic status, cultural group, gender identity or any other identifiable group; corruption; untruthfulness; criminal activity which could be construed as a felony; or violation of Department rules which might warrant more than a five day suspension.

- B.** **Class B:** any other allegations against an officer which, if true, could be construed as a violation of any laws, rules, regulations, or policies of the department, the Town, or the Commonwealth; or alleged discourteous conduct or language which would reflect negatively on the Department or the Town.
- C.** **Class C:** allegations which do not question the conduct of any officer, but rather raise issues relating to the appropriateness of Department procedures or policies.
- D.** **Class D:** Allegations that are clearly frivolous or for other reasons do not merit disciplinary action.
- E.** The IAO or Officer in Charge shall make a preliminary designation on the Form of Class A, B, C, or D, resolving any doubt in favor of a higher classification. A complaint may be designated "C" in addition to "A" or "B".
- F.** A copy of any Civilian Complaint Form which has been designated Class A shall, along with a copy of the police incident reports, be immediately provided to the Chief, who shall immediately provide such unredacted materials, marked "Confidential," to the Select Board.
- G.** Prior to the conclusion of the departmental investigation (*i.e.*, through such time as the Chief sends his or her report to the Select Board), information concerning an investigation, other than the fact that an investigation is underway, shall remain confidential.

#### **4. INTERNAL AFFAIRS/STAFF INSPECTION OFFICER AND PROCEDURES**

- A.** A Deputy Superintendent or Lieutenant shall hold the position of Internal Affairs/Staff Inspection Officer (IAO). This officer shall be answerable only to the Chief and the Select Board. The IAO shall have responsibility for the investigation and processing of complaints under this policy unless the Chief, in extraordinary circumstances, designates another superior officer to do so, in which case such superior officer shall fulfill the responsibilities of the IAO set forth in this policy.
- B.** The IAO shall conduct periodic staff inspections and shall reduce to writing to the Chief any alleged violations of departmental rules and regulations or any other allegations which, if true, could merit corrective or disciplinary action.
- C.** All investigations of complaints shall strictly follow the guidelines in this policy unless there is a good reason to deviate from these guidelines and such deviation

would not compromise the fairness, completeness, and reliability of the investigation. If there is a deviation from these guidelines, the reason for such deviation shall be stated in the investigation report.

- D.** All complaints received by the Chief shall be immediately forwarded from the Chief to the IAO for investigation, unless the Chief, in extraordinary circumstances, designates another superior officer to investigate a complaint.
- E.** In the case of a Class A complaint, the IAO shall exercise all due diligence to attempt to schedule a personal interview with the complainant within 72 hours, offering to meet the complainant at any reasonable location. If the complainant insists, they may be interviewed over the telephone and this shall be noted in the report.
- F.** In the case of a Class B or C complaint, the IAO shall attempt to reach the complainant by telephone within one week. The complainant shall be invited to the station to meet with the IAO, but may be interviewed on the telephone if they prefer.
- G.** For Class D complaints, the IAO shall review the complaint and return it to the Chief with a report recommending either reclassification, or a finding of either "exonerated" or "unfounded".
- H.** The IAO shall use any and all lawful investigative techniques including prompt and private interviews of witnesses and officers, maintaining thorough records of all conversations and investigative occurrences, and assisting both complainants and officers in identifying and locating evidence to corroborate their factual assertions.
- I.** The IAO shall make reasonable attempts to interview all witnesses identified by the complainant or subject officer, or reasonably identifiable from information obtained from either of them or from any officer on the scene of the incident or otherwise, who reasonably appear to possess information relevant to the investigation.
- J.** Witnesses who are interviewed by the investigator are entitled to have a representative of their choosing present with them during their interview.
- K.** Witnesses shall be asked to specify any information they supplied that they wish the Department to maintain confidentially, to the extent doing so is permissible under the law.
- L.** Witnesses shall be requested to sign their statements or the summary of their statements created by the IAO, if they did not supply a statement on their own.
- M.** Summaries of witness interviews shall reflect whether the interview was conducted in person or by telephone, and whether it was conducted as a joint

witness interview with any other witness(es) and if so whom. As a general rule, joint witness interviews shall be avoided when possible.

- N. Inability to interview, or lack of cooperation by the complainant, the officer, or any person, shall not foreclose further investigation.
- O. An investigation shall go forward regardless of any potential civil or criminal liability, investigation, or charges. Should a critical witness claim a Fifth Amendment privilege because of a pending or potential criminal proceeding, the Select Board, after receiving a recommendation from the Chief, may defer the conclusion of the investigation or hearing, until the conclusion of the criminal proceeding, or until the witness is willing to testify, whichever is earlier.
- P. **Subject Officer:**
  - 1. After diligent efforts to interview the complainant, the IAO shall issue to the subject officer a written statement of the allegations and the employee's rights and responsibilities relative to the investigation and shall subsequently interview the officer, unless either step would interfere with the investigation.
  - 2. A subject officer shall not initiate contact with the complainant or any witness. If unavoidable contact occurs, they shall not discuss or indirectly allude to the complaint or its allegations.
  - 3. A subject officer may have counsel or a union representative present at any interview unless an unreasonable delay would be necessitated.
  - 4. In interviewing or attempting to interview the subject officer, the IAO or other investigating officer shall be mindful of the provisions of state and federal law that are applicable to the questioning of public employees.
- Q. The IAO shall respond to all reasonable inquiries by the complainant as to the status of the investigation. Any delays shall be explained to the complainant.
- R. In the case of a Class A or B complaint, and subject to approval by the Chief and after an investigation has been completed, the IAO may attempt to act as a mediator and seek a proposed disposition, such as an apology or promise of future efforts(s) (*e.g.*, the Early Intervention System, see Section III(18) below), which is mutually agreeable to the complainant and the accused officer. Any such agreement by the officer shall not be considered an admission of fault and shall only be considered in mitigation of the severity of the disposition, if any. Neither party shall be pressured to accept such an agreement. Any such agreement shall be subject to the approval of the Chief and Select Board as hereinafter described.
- S. If, during an investigation, the IAO learns of any allegation (including a Class C-type allegation) beyond the scope of the complaint under investigation, they shall



execute a new Civilian Complaint Form and initiate the procedures herein described.

- T.** Unless the Chief certifies that good cause requires an extension of no more than 30 days, the IAO shall submit to the Chief a report containing their findings and conclusions within 30 days of commencing an investigation of a complaint. Any extensions beyond the foregoing shall be submitted for approval by a majority of the Select Board. The findings and conclusions shall include:
1. All pertinent reports and documents, including any witness statements that were submitted in writing or reduced to writing.
  2. A detailed account of all pertinent factual assertions of everyone interviewed noting times and persons present at interviews, highlighting areas of agreement and disagreement, etc.
  3. Proposed factual conclusions, including the relative credibility of any conflicting factual allegations, and objective reason(s) for such conclusions, with regard to each original allegation and any others that have become apparent during the investigation. The lack, existence, quantity, or quality of corroborating evidence shall be pertinent to the weight of any evidence, but shall not be determinative.
  4. On each such allegation, a proposed finding based upon a preponderance of the evidence shall be made using the following categories and definitions:
    - a. "Unfounded" - investigation revealed that the alleged conduct did not occur.
    - b. "Exonerated" - alleged action occurred but was reasonable and proper.
    - c. "Not Sustained" - allegation cannot be either proven or disproved.
    - d. "Sustained" - investigation indicates sufficient evidence to support the allegation.
    - e. "Mediated" - both parties agree to a proposed and described disposition (Classes A and B only).
    - f. "Filed" – no action necessary or possible at this time.
  5. Any mitigating or aggravating circumstances which have come to the attention of the IAO.

6. Relative to any allegations that are sustained or not sustained, a chronological list of any similar complaints against the said officer, along with the dispositions.
7. Witness statements shall be appended to the IAO report.

**U. INVESTIGATIVE TECHNIQUES:**

1. All investigations under this policy shall be conducted in accordance with the normal and legal Department investigative procedures with regards to:
  - a. The use of detection equipment
  - b. Medical or laboratory examinations
  - c. Covert photographing, and photo identification
  - d. Lineups
  - e. Financial disclosure information
2. **INVESTIGATIVE TECHNIQUES GENERALLY:** In conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods shall be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused employee. An internal administrative investigation shall be conducted with the same degree of professional competence as is devoted to a criminal investigation. Employees or officers will have the same rights on these matters as any individual under investigation by this Department.

The accuracy of the investigative report shall be assured by requiring the investigator to take all reasonable efforts to obtain witness statements by one or more of the following methods:

- a. Taped (audio or video) statements with consent of witness;
- b. Witness's own signed statement;
- c. Witness's verbal statement given to the IAO and reduced to writing by the investigator and reviewed for accuracy and signed by the witness, affirming that the statement is accurate.

Witnesses who do not wish to sign statements they submit or statements reduced to writing by the investigator shall not be required to do so. If the witness disagrees with the investigator's version of the witness's statement and the investigator declines to change the statement in conformity with the witness's wishes, the witness shall be asked to submit their separate version of what they said and asked to sign it.

3. **MEDICAL/LABORATORY EXAMINATION:** Upon orders of the Chief of Police or their designee, an employee may be required to submit to a medical or laboratory examination, at the Department's expense. This

examination must be specifically directed and narrowly related to a particular internal affairs investigation being conducted by the Department.

4. **IDENTIFICATION:** A police officer may be required to be photographed and can be compelled to stand in a lineup for identification in connection with an administrative investigation when such action is material to an investigation, and a refusal can be the basis for an additional disciplinary charge of refusal to obey a lawful order. Such a lineup shall be fairly constructed and not be unfairly suggestive and shall not be used for an administrative investigation where criminal charges are contemplated.
  5. **SEARCHES:**
    - a. A police officer's personal property, including their home, car and other property, is protected from unreasonable search and seizure under the Massachusetts Constitution, and it is possible that any evidence illegally obtained may not be used as evidence in an administrative proceeding.
    - b. Department property furnished to the officer, such as desks, lockers, or vehicles, in which it is clearly understood in advance that an officer has "no expectation of privacy," may be searched without a warrant.
  6. **FINANCIAL DISCLOSURE:** A police officer may be compelled to submit a financial disclosure statement as part of an internal affairs investigation provided such statement is material to the investigation being conducted. Such submissions shall only be conducted in a manner that is consistent with federal and state statutory and case law and past administrative decisions.
  7. **LIE DETECTOR/POLYGRAPH TESTS:** Under the provisions of G.L. c. 149, § 19B, police officers may be required to submit to a polygraph or lie detector test in connection with an internal administrative investigation if such test is conducted by a law enforcement agency in the course of a departmental investigation of criminal activity, and under such circumstances, officers may face disciplinary action for refusal. Such tests shall be administered by trained and certified individuals in accordance with federal and state statutory and case law and past administrative decisions.
- V. On a monthly basis, the IAO shall prepare a report enumerating all complaints (including Class C and D complaints) against departmental employees and complaints against the Police Department generally that had been brought to the

attention of the IAO during that month. Included in the report will be the outcome(s) of the investigation(s) that have been completed and the status of investigations not yet completed. On an annual basis, the IAO shall compile statistical summaries of IAO investigations for the preceding year, such information to be presented to the Board within the Chief's annual departmental report to the Select Board.

**W. TRAINING:**

The IAO and other Department personnel shall be trained concerning requirements of this policy. IAO training shall include training on the weighing and evaluating of evidence, including the credibility of witnesses.

**5. DISPOSITION AND NOTIFICATION BY THE CHIEF:**

- A.** The complainant and the subject officer shall be furnished with a copy of the IAO report within seven days of its completion, provided that the Chief shall redact 1) from any copy of the IAO report the Department furnishes to a person other than the person the information concerns (*i.e.*, the subject officer, in the case of (a) below, and the complainant, in the case of (b) below), information relating to similar prior complaints that date in excess of two years prior to the incident that were a) made against the police officer, or b) filed by the complainant as a civilian complaint; 2) the name and other identifying information of any private person who requests that their identity not be disclosed; and 3) any information in the report that comes within an exemption to the Massachusetts Public Records Law, G.L. c. 66, § 10 and G.L. c. 4, § 7(26). Such IAO report shall be accompanied by any witness statements that were submitted in writing or reduced to writing pursuant to this policy, which shall be redacted upon distribution to the complainant and subject officer as set forth in items 1, 2, and 3 of this Paragraph. The complainant and the police officer shall be notified that any comments concerning the IAO report, including additional statements by witnesses, may be submitted to the Police Chief within 10 days of receipt of such materials. Any such comments and statements shall be appended to the IAO report. Should any such comments and statements be received, the Chief shall take any action they deem appropriate, however, the Chief is not expected to negotiate with anyone concerning the content of the final report he or she submits to the Select Board.
- B.** Upon receipt of the IAO's report containing its findings and conclusions and the passage of the allowed time for the complainant and police officer to submit comments regarding the IAO report, the Chief shall either:
1. Request a further investigation; or
  2. Promptly prepare their own report setting forth the Department's final disposition with regard to the classification of the complaint, and of each allegation along with a summary of the reasons therefore. The Chief's report shall also indicate what, if any, disciplinary action or remedial

measures were taken or are recommended to be taken. Such actions or measures may include the assignment of the officer to the “Early Intervention System,” see Section III(18) below.

- C. After completion of their report, the Chief shall promptly send:
1. To the Select Board via the Town Administrator, a copy of their complete report along with the IAO report and investigative file, in unredacted form and marked “Confidential,” which the Select Board shall maintain confidentially in a secure environment.
  2. To the complainant and to the police officer who is the subject of the complaint,
    - a. a Notice of Complaint Disposition Form indicating the disposition of each allegation and an Internal Investigation Appeal Form and a return, addressed envelope. Said notice shall clearly explain the right to and process for appeal for review by the Select Board; and
    - b. a copy of the Chief’s report, including any comments by the complainant and subject officer and additional statements by witnesses, provided that the Chief’s report and accompanying materials shall be redacted in the same manner set forth in Section III(5)(A) with regard to the IAO report and accompanying materials.

## 6. MAINTENANCE/RELEASE OF DOCUMENTS

Documents relative to internal investigations shall be maintained confidentially in a secure environment, separate from personnel records or centralized Department or Select Board’s Office records. Such records shall be maintained and disseminated in accordance with those provisions of state and federal law applicable to the retention, maintenance, disclosure, dissemination, inspection and copying of public records and in conformity with this policy otherwise.

## 7. APPEAL TO SELECT BOARD

- A. Unless otherwise specified by the civil service laws, any member of the Police Department aggrieved by the Chief’s Report may appeal for review by the Select Board within twenty-one days. Said appeal shall be reviewed by Town Counsel and shall proceed as hereinafter described unless civil service laws mandate alternative procedures.
- B. Any civilian aggrieved by the Chief’s Report may, within twenty-one (21) days, appeal for review by the Select Board by submitting to the Town Administrator a completed Internal Investigation Appeal Form. The classification of the complaint may be the reason for such an appeal.

- C. Upon receipt of any appeal received in a manner other than through a completed Internal Investigation Appeal Form, , the Town Administrator shall send to the aggrieved person an Internal Investigation Appeal Form and a return, addressed envelope.

**8. REVIEW BY THE TOWN ADMINISTRATOR (*All references to the Town Administrator shall also connote and include the Deputy Town Administrator*)**

- A. Upon receipt of a completed Internal Investigation Appeal Form, the Town Administrator shall:
  - 1. Review the class designation, and amend the designation if necessary in their opinion, which designation shall subsequently be reviewed and either approved or changed by the vote of the Select Board (including any change that adds a Class C designation).
  - 2. Immediately forward an unredacted copy of the complaint, the Chief's report, the IAO report, and all supporting documents (including all witness statements and any comments of the complainant, the subject officer and witnesses with regard to the IAO report) to the Select Board, which shall be marked "Confidential" and which the Select Board shall maintain confidentially in a secure environment.
  - 3. Review the reports for completeness, and send the matter back to the Chief for any further investigation that they or any Select Board member deems helpful.
  - 4. Submit to the Select Board at least one interim report more than one week before the conclusion of the Town Administrator's review.
  - 5. Complete their review within 30 days with regard to Class A complaints and 15 days with regard to Class B and C complaints, unless such period is extended for good cause by the Select Board.
- B. All documents and reports subsequent to the Chief's findings shall remain confidential to the extent permitted under the Massachusetts Public Record Law, G.L. c. 66, §§ 10 and G.L. c. 4, § 7(26), except that such documents shall be disseminated to the complainant and the police officer as specified in this policy.
- C. If a majority of the Select Board considers a Class A or Class C complaint particularly complicated or to require additional effort or expertise, special counsel may be retained to conduct an investigation.
- D. If, at any time, the Town Administrator or any Select Board member believes that allegations beyond the scope of the Department investigation, such as possible misconduct by a different officer, have been raised, a new Complaint Form shall

be executed and referred to the Department for immediate and expedited investigation and processing.

**9. CIVILIAN APPEAL HEARINGS, ACTION BY THE SELECT BOARD, AND DISCIPLINARY HEARINGS**

- A.** Within 30 days after completion of the Town Administrator's review, all appeals from dispositions of civilian complaints, except as set forth below, shall be docketed for the Select Board to hear at a Civilian Appeal Hearing at a regularly scheduled Select Board meeting in conformity with the Massachusetts Open Meeting Law, G.L. c. 39, § 23B.

All matters involving 1) a recommendation by the Chief, thereafter approved by the vote of the Select Board and reflected in any written notice the Board issued to the officer pursuant to G.L. c. 31, § 41, for discharge, removal, suspension for a period of more than five days, layoff, transfer from a position without written consent, lowering in rank or compensation without written consent, or abolishing of a position within the meaning of G.L. c. 31, § 41, or 2) any appeal by a police officer from other forms of disciplinary actions, shall be docketed for the Select Board to hear as a Disciplinary Hearing (*see* Section III(9)(E)), which shall be scheduled and held in conformity with the Massachusetts Civil Service Laws, G.L. c. 31, the rules and regulations promulgated thereunder, the Massachusetts Open Meeting Law, G.L. c. 39, §§ 23A and 23B, and/or this policy, Section III(9)(E), as applicable. The matters set forth in this Paragraph shall proceed directly to a Disciplinary Hearing, without being heard at a Civilian Appeal Hearing and without further vote of the Select Board.

Civilian Appeal Hearings that are held in connection with appeals from dispositions of civilian complaints shall be postponed beyond 30 days as follows:

1. no more than two weeks for further investigation at the request of any Select Board member or;
  2. by vote of the Board, until the completion of the investigation of any new Complaint issued under Sections III(4)(S) and III(8)(D) above.
- B.** The procedural protections of G.L. c. 31, § 41 shall be limited to Disciplinary Hearings held pursuant to Section III(9)(E) of this policy.

**C. CIVILIAN APPEAL HEARINGS:**

1. At least two weeks notice of the Civilian Appeal Hearing to be held in connection with an appeal from the disposition of a civilian complaint shall be given to the Chief, the complainant, and, in a Class A, B or D Complaint, the accused officer.

2. Where the appellant is a civilian who has filed a Class A, B or D Complaint, the Chief and the appellant, or their representatives, shall each be entitled to make an informal presentation before the Select Board at such Civilian Appeal Hearing. The subject officer and/or their representative shall be entitled, but shall not be required, to make an informal presentation at such Civilian Appeal Hearing. In addition, the appellant and the subject officer shall each have the right, but shall not be required, to present up to three eyewitnesses to make informal presentations, each of whom shall have the right to address the Board for no more than five minutes. By a majority vote, the Select Board may permit additional eyewitnesses to make informal presentations at such Civilian Appeal Hearing or may extend the time for such presentations.

**D. ACTION BY THE SELECT BOARD:**

1. By majority vote, the Select Board shall do one of the following with regard to appeals from civilian complaints after hearing informal presentations at the Civilian Appeal Hearing in the case of Class A, B or D Complaints:
  - a. After deliberation in conformity with the Massachusetts Open Meeting Law, G.L. c. 39, §§ 23B(1), take steps regarding potential disciplinary action in conformity with such law, with the Massachusetts Civil Service Law, G.L. c. 31, and with Section III(9)(E) below, as applicable (including, if and as applicable, (a) the issuance of written notice to the subject officer stating the action contemplated and the specific reason(s) for such action, and (b) the docketing and convening of a two-phase Disciplinary Hearing as described in Section III(9)(E)(2) and otherwise below); or
  - b. Refer the matter back to the Police Chief for further action; or
  - c.. Appoint one or more independent persons to conduct an investigation and write a report for the Select Board concerning the facts relating to the complainant's allegations. The person(s) selected to conduct the investigation should, depending on the nature of the complaint, be experienced in working with persons of diverse backgrounds, including racial, ethnic and cultural groups, and people of different genders, sexual orientation, and mental and physical abilities. After receipt of that report, the Select Board may take any of the steps set forth in Sections III(9)(D)(1)(a), (b), or (d); or
  - d. Dismiss the complaint and notify all parties of such.



- 2.. For Class C complaints, the Chief shall, more than one week before the Civilian Appeal Hearing, provide an explanation of the current policy, possible alternatives, factual or legal background material, and any other information requested by the Town Administrator or any Select Board member.
3. For Class C complaints, any individual and/or organization may submit a written or brief oral presentation regarding the appropriateness of the Department policy or procedure, and the Select Board may invite any community group (such as the Human Relations/Youth Resources Commission) known to have interest or expertise to participate in the Civilian Appeal Hearing regarding such appropriateness. Where a complaint, in addition to Class C allegations, contains allegations that could subject an officer to discipline, the allegations specific to the officer shall be governed by Section III(9)(C)(2) above and any Civilian Appeal Hearing regarding the Class C allegations may be bifurcated from any Civilian Appeal Hearing regarding Class A, B or D allegations specific to the officer.

**E. DISCIPLINARY HEARINGS:**

- 1.. The Select Board may choose to make the convening of a Disciplinary Hearing of a Class B or D complaint contingent on the appearance by the person who filed the complaint of misconduct to appear and give testimony in accordance with these procedures.
2. The Disciplinary Hearing shall be separated into two phases, the first phase to determine a finding (*see* Section III(4)(T)(4) *supra*) on each allegation and, if an allegation against an officer is sustained, a second phase to determine the disciplinary disposition, both by vote of a majority of the Select Board.
3. Disciplinary Hearings shall proceed in accordance with the civil service law, G.L. c. 31, the regulations thereunder, and the following provisions:
  - a. The parties to a Disciplinary Hearing shall consist of the Subject Officer and the Chief or his or her designee as the employer-complainant. In the event that the Chief is not pursuing the matter, the Town shall be a party to such hearing as the employer-complainant.
  - b. Pursuant to G.L. c. 31, § 41, the Chief or the Town shall file a written request and notify the parties that the hearing shall be public unless:
    - i. The accused officer does not file a written request for a public Disciplinary Hearing, and

- ii. The accused officer or the employer-complainant requests a closed Disciplinary Hearing, the requirements of G.L. c. 31, § 41 are met, and the Board votes for a closed session.
- c. A Disciplinary Hearing shall be docketed for hearing by the Select Board promptly and in any event within any applicable timeframes established by the Civil Service Law.
- d. Either party to a Disciplinary Hearing may bring witnesses to testify. A subpoena shall be issued at the request of the Town Administrator or Select Board, or at the request of any party unless a majority of the Select Board deem such a subpoena unreasonable and unfair.
- e. Either party may be represented by an attorney or other designated spokesperson. A witness may be represented by counsel.
- f. The Disciplinary Hearing is administrative and need not be conducted according to technical rules of procedure, evidence or witnesses. The purpose of the Disciplinary Hearing is to determine the facts and situations surrounding a case. The Select Board, especially when counsel is not present, shall protect the rights of all parties whenever through the lack of ability, inexperience, or oversight, either side's case may seem to be improperly prejudiced.
- g. The Chairperson will conduct the Disciplinary Hearing subject to being overruled by a majority of the Board members. Members of the Board shall be finally responsible for obtaining complete and accurate facts.
- h. The first phase of the Disciplinary Hearing will proceed as follows: The employer-complainant will present the Complaint, and introduce witnesses, if any. In the case of a Class A complaint for which the person who filed the complaint of misconduct does not appear to testify, Town Counsel will perform the role of that person. The Subject Officer shall then respond to the complaint and introduce witnesses, if any. Each person testifying, and each party to the complaint, may be questioned by the Board and by the parties or their attorneys. After the Board has taken all relevant evidence, each party will be given an opportunity to make a closing statement. At the conclusion of the first phase, the Board shall take a vote to determine the finding(s) on each allegation and proceed, if appropriate, to the second phase.
- i. Oral evidence shall be taken only under oath or affirmation.

- j.** Upon the request of either party or a Select Board member, witnesses other than the accused officer shall be excluded from the hearing until they are called to testify.
- k.** Each party to the Disciplinary Hearing shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called them to testify; and to rebut the evidence against them. If the Subject Officer does not testify in their own behalf they may be called and examined as if under cross-examination.
- l.** Any evidence which is relevant to the allegations in question shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

"Hearsay evidence" shall have that definition afforded the term under Massachusetts law, and generally refers to a statement that was made other than by a witness while testifying at the Disciplinary Hearing and that is offered to prove the truth of the matter stated.

- m.** If the Select Board decides that additional information is necessary to reach its findings, it will continue the hearing to a future date unless the parties agree to allow the Board to receive such material in writing without reconvening.
  - n.** The standard of proof for the Select Board findings of fault shall be preponderance of evidence.
  - o.** Evidence of unrelated allegations, incidents, or personnel records may be received only in the second phase of the Disciplinary Hearing.
- 5.** In addition to its deliberations and votes(s) at the Disciplinary Hearing, the Select Board shall provide a written notice of its decision and disposition to the accused officer in accordance with G.L. c. 31, § 41, to the Chief, and to Town Counsel.

6. All documents relating to the Town Administrator's and the Select Board's investigations may be released in accordance with Section III(6), supra, only.
7. The officer shall retain his or her right to further review under G.L. c. 31, § 43.

**10. RELIEVING EMPLOYEE FROM DUTY:**

No Officer shall be relieved from duty as a result of an Office of Professional Responsibility investigation unless such action is in accordance with G.L. c. 31, §§ 41 and 62.

**11. RELIEF FROM DUTY – RIGHTS OF COMMANDERS:**

The Commanding Officer of any shift or Division within the organization of the Brookline Police Department may relieve, with pay, any officer or employee under their command for the balance of the assigned shift only if said Commanding Officer has determined that the officer or employee is unfit or unable to perform or carry out their assigned duties or responsibilities. This action may or may not occur as a result of a need for disciplinary investigation or action.

*Examples of relieving for non-disciplinary reasons would be as follows:*

- A. If the officer or employee is suffering from an illness and appears too sick to work effectively or safely.
  - B. If the officer or employee reports to work injured, is injured during the performance of duties and a physician advises that they be relieved, or is injured on duty and refuses to acknowledge the apparent danger the injury may place them in if remaining on duty.
  - C. The officer's or employee's mental state as the result of an unusual or traumatic situation presents a danger that duties and responsibilities may not be performed safely and properly.
  - D. Any action by an officer or employee that results in death or serious injury, but not limited to the use of force.
- 12.** Commanders may also relieve any officer or employee from duty, with pay, for the balance of the assigned shift only, for any infraction or violation of the Rules, Regulations, Policies, Procedures, or Orders of the Department which would be conducive to holding the Department up to public ridicule or scorn, or would jeopardize the Department's mission to effectively provides police services to the community. Specific examples include, but may not be limited to, the following;

- A. Reporting to duty while under the influence of alcohol or controlled substances.
  - B. Insubordination.
  - C. Committing a criminal offense while on or off duty.
  - D. Improper use or operation of Department vehicles or equipment.
  - E. Falsifying a statement or record.
  - F. Abusing, stealing, damaging, destroying, or defacing property or equipment of the Department or others.
13. Any Commanding Officer who relieves an officer or employee from duty for disciplinary reasons shall immediately notify the Chief of Police or his or her designee and file a written Special Report, to the Chief of Police, containing all the details of the matter. Further investigation into the matter will be conducted in accordance with the procedures outlined previously in this directive.
14. Any Commanding Officer who relieves an officer or employee from duty for non-disciplinary reasons, except sickness on duty, shall file a complete written Special Report on the details to their immediate superior, with copies going to the Chief of Police.

**15. LIAISON WITH DISTRICT ATTORNEY:**

Any Office of Professional Responsibility investigation which may, or does, result in criminal charges being brought against an officer shall require the District Attorney's Office be apprised of the case for the purpose of advising on legal issues, and ultimate prosecution if necessary.

**16. PUBLIC EDUCATION:**

The Department shall maintain a brochure that it shall make available to complainants and other members of the public explaining the steps that will be followed in the complaint process. The brochure and any other informational materials about the civilian complaint process shall be subject to prior approval by the Select Board.

The Select Board shall ensure the creation of a plan, subject to biennial review, for educating the public about the complaint process, including on the Town Website.

**17. PERIODIC ASSESSMENT:**

The Police Chief assisted by two civilians, appointed by the Select Board, shall biennially provide the Select Board, Town Meeting, and the public with a report on the functioning of the police complaint procedures. To the extent practicable, the civilians should be individuals with experience in the issues raised by civilian complaints against police

officers, including, but not limited to, experience working with persons of diverse backgrounds and viewpoints. The report shall include an assessment of the investigations of civilian complaints, an assessment of the Select Board's role in the complaint process, relevant statistics, comparisons with comparable communities, survey results, and recommendations for any changes.

## **18. THE EARLY INTERVENTION SYSTEM**

This Early Intervention System is designed to assist a potentially troubled police officer, improve accountability and enhance the quality of policing in Brookline.

### **A. STATEMENT OF PURPOSE AND POLICY**

The Brookline Police Department is aware of the complexities of policing in today's society. In an effort to improve the quality of policing, the Department has instituted an early intervention system. This system is a progressive program that involves training, counseling and discipline. It will be used to identify officers who may be having difficulties in performing police work. By identifying these officers at an early stage, intervention can take place to correct behavior patterns thereby making it less likely they will re-occur in the future. This system will also identify problem areas, training needs and issues that must be addressed in order to provide professional and effective policing.

**B.** When a complaint is received regarding the actions of an officer, the Internal Affairs Officer will conduct an investigation into the complaint. In most cases, the IAO will meet with the officer complained against at some point in this investigation. During the meeting, the officer is to be made aware of the nature of the complaint alleged. At the earliest possible time, the supervisor of the officer will also be made aware of the nature of the complaint. Upon completion of this investigation, the final determination is to be made known to the officer and their supervisor. At the discretion of the Chief, Superintendent and/or the IAO, a meeting may take place between the IAO, the subject officer and the officer's supervisors. If further action is deemed necessary, input is to be received from all present regarding the necessary steps to be taken to insure actions of this type do not re-occur in the future.

**C.** Any member of the Department who receives three complaints against them within a two-year period will be subject to review. This review will include the cases that prompted the complaints to be filed against the officer. Present at this review will be the IAO, the Commander of the Division to which the officer is assigned and the officer's immediate supervisor(s). All present will be expected to provide input into the complaints, the particular officer's actions and their history. During this review, participants have the opportunity to support the officer's actions, identify any particular problems the officer is having, identify potential problems areas within the Department and, if necessary, recommend possible remedies.

**D. RECOMMENDATIONS:**

If a problem is identified, possible remedies include:

1. Counseling with Supervisors and/or Commander;
2. Additional training;
3. Referral for medical or psychological fitness examination;
4. A combination of additional training and supervision.

In these cases a program will be developed by the supervisor of the officer, subject to the approval of the Division Deputy Superintendent, The supervisor is to explain the program, outline steps in detail and the officer and supervisor are to sign off on the plan indicating their understanding of it. Furthermore, complete status reports are to be filed by the supervisor weekly for the first four weeks and monthly thereafter until the problem is solved. This program will include, but not limited to, ride along with a supervisor, one on one supervision, increased training and will cover a period of time not less than six months. A report is to be prepared and submitted regarding the actions recommended or taken under this system. This report is to be submitted to the Chief of Police and Superintendent.

**E. REVIEW PROCESS:**

1. This process of review will be ongoing. Reviews such as those set out under this system may be initiated based on a specific incident.
2. This review will not be limited to the individual police officer, This review includes potential changes and policies, procedures, and methods of operation.
3. The IAO is to conduct an on-going analysis of the type of complaints alleged against all Brookline Police Officers. Once the IAO has determined the nature of the complaints, the Department will have identified a training need.