

# NEW HAVEN DEPARTMENT OF POLICE SERVICE

## GENERAL ORDERS



GENERAL ORDER 2.08

EFFECTIVE DATE: August 12, 2015

### CIVILIAN COMPLAINTS

#### 2.08.01 PURPOSE

The purpose of the General Order is to establish the Civilian Complaint function of the New Haven Department of Police Service and to provide a uniform policy to accept, process, investigate, take appropriate action upon and resolve complaints from a member of the public relating to alleged misconduct or malfeasance committed by law enforcement personnel of the New Haven Department of Police Service. Complaints may allege abuse of authority, corruption, criminality, poor or slow service, or other misconduct or malfeasance on the part of Department personnel.

#### 2.08.02 POLICY

It is the policy of the New Haven Department of Police Service to respond to allegations of misconduct or malfeasance against its employees consistent with this policy and fairly and impartially investigate all complaints or allegations of such conduct to determine their validity. The Department shall impose any disciplinary or non-disciplinary corrective actions that may be warranted in a timely manner. The Department shall accept and document all complaints against any employee regardless of whether the filed complaint is in writing, verbal, in person, by mail, by telephone (or TDD), by facsimile, electronic, or anonymous.

- There shall be no retaliation in any form by any member of this Department directed at an individual who makes a complaint.

- During the complaint intake process, no questions shall be asked of a complainant regarding their immigration status.
- Officers who withhold information, fail to cooperate with department investigations or who fail to report alleged misconduct or malfeasance of employees to a supervisor shall be subject to disciplinary action.

### **2.08.03 BACKGROUND**

Public Act No.14-166 provides that “Not later than July 1, 2015, the Police Officer Standards and Training Council shall develop and implement a written policy concerning the acceptance, processing and investigation of a complaint from a member of the public relating to alleged misconduct committed by law enforcement agency personnel.”

### **2.08.04 DEFINITIONS**

**CHIEF OF POLICE:** Department Head

**COMPLAINT:** An allegation of employee misconduct or malfeasance. A disagreement over the validity of a traffic infraction or criminal arrest is not a complaint. The complaining person should be advised to contact the proper court which has jurisdiction in the matter.

**COMPLAINANT:** Any person who files a complaint regarding misconduct or malfeasance on the part of a Department employee.

**COMPLAINT CASE NUMBER:** A sequential number used to identify and track civilian and internal complaint investigations.

**COUNSELING:** Information relayed to an employee by a ranking officer or training officer, in which the information relayed points out strengths, weaknesses, or training needs, or offers the employee the opportunity to improve performance. Counseling is not disciplinary by itself, but may progressively lead to discipline.

**DISCIPLINE:** Adverse action taken by the Department against any employee as the result of a sustained internal affairs investigation including, but not limited to, a written reprimand, suspension, demotion or dismissal.

**EMPLOYEE:** Any person employed by the Department, whether sworn or non-sworn.

**EXTERNAL COMPLAINT:** A complaint that originates from outside the department.

**INTERNAL AFFAIRS UNIT (IA):** The designated unit with primary responsibility to conduct investigations of administrative or Citizen Complaints of misconduct or malfeasance.

**INTERNAL COMPLAINT:** A complaint that is opened by the Chief of Police or his/her designee. Such complaints may be initiated by other New Haven Department of Police Service employees or from supervisors who observed, or were informed by other employees, of possible policy violations.

**MALFEASANCE:** Illegal or dishonest activity especially by a public official.

**MISCONDUCT:** Any act or omission by an employee that is illegal or which violates established policy.

**OFFICERS:** Any law enforcement officer employed by or assigned to the New Haven Department of Police Service including supervisors.

**SERIOUS USE OF FORCE:** Any action by an officer that involves:

- The use of deadly force, including all firearm discharges, excluding the dispatch of an animal.
- A use of force in which the person suffers serious bodily injury, or requires hospital admission.
- A canine bite.
- The use of chemical spray or Conducted Electrical Weapon against a restrained person.

**SERIOUS MISCONDUCT:** Suspected criminal misconduct and the specific forms of misconduct identified below. Such conduct shall be investigated by the Internal Affairs Unit and may be referred to the State's Attorney's Office. A parallel Internal Affairs investigation will be conducted to ensure no administrative or departmental violations have occurred but may be delayed until the resolution of the criminal investigation. Examples of serious misconduct include, but are not limited to the following:

- All criminal arrests or filing of criminal charges against a New Haven officer.
- Discrimination (e.g., on the basis of age, ethnicity, gender, marital status, physical ability or disability, race, religion, sexual orientation, but excluding employment discrimination).
- Unlawful search and seizure.
- False arrests or filing of false charges.
- Any act of retaliation or retribution against an officer or person.

- Excessive use of force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose).
- Intentionally providing false or incomplete information during the course of a New Haven Department of Police Service investigation, or in any report, log, or similar document.

**SUPERVISOR:** Includes those holding the rank of Sergeant or higher.

**USE OF FORCE INCIDENTS INDICATING POTENTIAL CRIMINAL LIABILITY:**

Includes, but is not limited to, all strikes, blows, kicks, or other similar uses of force against a handcuffed subject, and all accusations or complaints of excessive force.

### **2.08.05 PROCEDURES**

#### **ACCEPTANCE, FILING AND INTAKE OF COMPLAINTS**

All persons are encouraged to bring forward legitimate complaints regarding possible misconduct or malfeasance of employees of this Department. All sworn and civilian employees shall be required to accept a complaint alleging misconduct or malfeasance by Department personnel. All employees must courteously inform an individual of his or her right to make a complaint if the individual objects to an employee's conduct. Employees have a duty to assist any person who wishes to file a citizen's complaint by documenting the information and allegations they provide, advising the individual how to proceed, and by promptly putting the complainant in contact with a supervisor who can assist them with filing their complaint. No employee shall refuse to assist any person who wishes to file a citizen complaint or discourage, interfere with, hinder, delay, or obstruct a person from making a citizen complaint.

#### **ACCEPTANCE OF COMPLAINT**

- The Department shall use a standardized form to record complaints. Each complaint shall be assigned a Complaint Case Number (CCN) to track complaints and a copy of this form shall be filed in a separate Complaint File.
- Complaints may be accepted in writing, verbally, in person, by mail, telephone (TDD), facsimile, and electronically, or by any other means. Anonymous and third party complaints will be accepted.
- All employees will assist those who express a desire to lodge complaints against any member of the Department. This includes:
  - Calling a supervisor to the scene to conduct a preliminary inquiry and document the complaint.
  - Explaining the Department's complaint procedures.

- Providing complaint form(s) and/or complaint filing information and/or giving instructions as to where the complaint forms may be obtained.
- Ensuring that complainants who are unable to read, write or understand the English language with sufficient proficiency to fill out the complaint form, or to be interviewed regarding their knowledge of the incident complained of, receive adequate language assistance to permit them to file their complaint and assist, as needed, in the investigation thereof. The name and identifying information of any person providing such language assistance to a complainant shall be recorded on the complaint form or in the body of the report.
- All personnel who are approached by a person seeking to make a complaint will, when possible, call a supervisor, obtain a brief description of the allegation, and record contact information from the complainant if provided.
- If a supervisor is not readily available, the officer will inform the complainant that they will be contacted by a supervisor or the internal affairs unit by the next business day, if practicable. If contact cannot be made by the next business day, the reason(s) why such contact could not be made shall be documented.
- Sworn and civilian employees who receive a complaint about their own conduct shall immediately refer the complaint to a supervisor.
- All complaints shall be documented by a supervisor to include the date, time, location, and nature of the complaint, complainant's information (name, address, date of birth, telephone number, or other contact information, if provided), date and time the complaint was received, and the name, rank and/or title of the person receiving the complaint.
- The withdrawal of a complaint does not prohibit the Department from completing an investigation.
- If complaints are received by mail, all correspondence received containing allegations shall be forwarded to the Chief of Police or the Chiefs designee where they will be officially received. These complaints shall be assigned a Complaint Case Number. A letter of acknowledgment must be prepared advising the complainant that the matter is being investigated and that they will be contacted by the investigator assigned.
- Walk-in complaints, shall be referred to a Supervisor who shall then forward the complaint to the Internal Affairs Unit. After the complaint is received and properly documented, the complainant may be placed under oath and requested to sign the complaint after reading or having it read to them the warning for perjury or false statement. If the complainant refuses to sign the complaint or acknowledge the oath, the complaint will still be accepted and investigated, however the

refusal to sign or acknowledge shall be noted. In any event, the complaint will be assigned a Complaint Case Number and forwarded as above.

- Telephone complaints shall be referred to a Supervisor or the internal affairs unit. The party who receives the complaint shall obtain the details of the complaint as soon as practicable, dispatch a supervisor to the complainant's location, and proceed as described in the foregoing paragraph.
- Complaints from the field in which any member of the Department is approached by a complainant expressing allegations of misconduct or malfeasance shall immediately be reported to a supervisor. The complainant shall be requested to await the arrival of the supervisor. If a supervisor is unavailable, or the complainant is unable to await the arrival of a supervisor, the complainant should be informed that he/she may respond to the Department headquarters to make his/her complaint.

#### **VALIDITY AND TIMELINESS OF COMPLAINTS**

- Complaints by persons Under the Influence of Alcohol or Drugs:
  - When a person who is noticeably intoxicated or impaired wishes to make a complaint, he or she shall be encouraged to wait until the earliest opportunity after he or she has regained sobriety to do so. When the Supervisor determines the circumstances require immediate action, preliminary details of a complaint should be taken by a Supervisor, when available, regardless of the person's sobriety. In that event, the internal affairs unit should re-interview the person after he or she has regained sobriety.
- Delayed or Untimely Complaints:
  - Complaints of misconduct or malfeasance shall be accepted regardless of when the alleged misconduct or malfeasance is alleged to have occurred. However, the timing of a complaint is one of the circumstances that the Department may consider in determining whether misconduct or malfeasance can be reliably substantiated and, if so, the nature and extent of discipline to be imposed. Where a delay in reporting alleged misconduct may call into question the veracity of the complainant, or has resulted in the loss or destruction of evidence or the inability to locate witnesses due to the passage of time, the facts and circumstances should be detailed in the report.
  - Although allegations of criminal behavior may be made past the expiration of the applicable statute of limitations and criminal prosecution may no longer be possible, a criminal violator may still be held accountable administratively.

- Complainant Who Fears Retaliation Associated With Filing A Complaint:
  - If a complainant expresses fears of retaliation as a result of filing a complaint, they must be assured that those fears will be taken seriously. Complainants should be asked to provide the basis for their concerns, if possible, and the information provided should be noted in the complaint. This will allow the supervisor or internal affairs unit to be aware of these fears and develop reasonable strategies to assist the complainant in dispelling those fears.

### **INTERNAL AFFAIRS RESPONSIBILITY**

The Office of the Chief of Police has primary oversight and authority over investigation of complaints made against employees. Upon receipt of a complaint, the Chief of Police will assure that the complaint is assigned to the Internal Affairs Unit for investigation through the appropriate chain of command.

The designated division, unit, person or supervisor shall be responsible for:

- Conducting a thorough, fair and impartial investigation of every complaint received regardless of the method of receipt.
- Investigating and determining the nature, facts and circumstances of every complaint.
- Reporting to a supervisor up to and including the Chief of Police, if warranted, the results of the investigation, any recommendations and the resolution of that investigation.
- Identifying and recommending for appropriate investigation and prosecution criminal misconduct discovered on the part of any individual during the course of an internal affairs investigation.
- Preparing suggested revisions of Department Policies and Procedures where existing deficiencies have been a contributing factor to misconduct.

### **2.08.06 INVESTIGATION OF COMPLAINTS**

#### **COMPLAINTS**

Upon receipt of a Complaint Form, the complaint will be reviewed and classified in its proper category for assignment. The two types of complaints are formal complaints and informal complaints.

## FORMAL COMPLAINTS

- A formal complaint is investigated by an Internal Affairs Investigator who will conduct a thorough investigation of the complaint. Witnesses and employees will be contacted and asked to give statements. Records and other evidence will be collected and analyzed. Every effort shall be made to collect all data pertaining to the complaint so that an impartial conclusion may be reached. The outcome of this investigation will be maintained in a file in the Internal Affairs Unit. The disposition of the investigation is provided to the complainant who files the complaint. The formal complaint process is utilized under the following circumstances:
  - The Chief of Police may initiate a formal complaint for an infraction of department rules, regulations or policies or for an illegal act. This is classified as an "I" case (for Internal Investigation).
  - A citizen may initiate a formal complaint. This is classified as a "C" case (for Citizen Complaint).
  - The formal complaint process may be utilized when an investigation would be so complex that it would be impractical for the accused employee's supervisor to undertake the task.

## INFORMAL COMPLAINTS

- The informal complaint process is utilized when a complainant asks, or agrees, to have the supervisor take the criticism directly to the employee in the form of either feedback or informal counseling. These are complaints that are not of a serious nature and both the complainant and the Department official taking the complaint agree that the situation can be handled without going through the formal process. Generally:
  - No discipline is administered.
  - No investigative paperwork is entered into an employee's personnel file.
  - Does not preclude the use of a Department Inspection Report being completed, if appropriate.
  - A memo on interaction will be maintained in Internal Affairs.

The Chief of Police or the Chief's designee shall assure that all complaints received are processed and investigated appropriately as set forth in this policy. Internal Affairs investigations shall be completed in a timely manner within the time limits determined by the Chief of Police, including extensions granted by the Chief of Police or designee for good cause.



- Complainants shall be notified in writing within five (5) business days of receipt that:
  - Their complaint has been received by the Department and is currently pending.
  - That a complaint number has been assigned (including the assigned number).
  - That they will be informed in writing of the outcome of the complaint promptly following conclusion of the investigation.
  - That they may contact the designated investigator (identify by name, telephone and/or email) at any time for further information while the investigation is pending.
- An employee who is the subject of a complaint shall be notified in writing within five (5) business days of the receipt of such complaint of; (1) the fact that a complaint has been made, (2) the identity of the complainant, if known, (3) the substance of the complaint, (4) the law or policy that is alleged to have been violated, and (5) the date upon which the investigation is expected to be completed.
  - Where prior notification of the subject of a complaint is reasonably likely to impede the progress of an investigation, result in the loss or destruction of evidence, or jeopardize the safety of any individual, the Chief of Police may direct in writing that such notification be delayed, stating the reasons therefore and the anticipated extent of the delay.
- Nothing in this policy precludes the Chief of Police from referring an internal affairs investigation to an outside agency if such action would be in the best interest of the municipality and of justice.

#### **RESPONSIBILITIES OF THE COMMANDING OFFICER (OIC):**

- Maintain a complaint log.
- Maintain a central file for complaints in a secured area, and in conformity with records retention requirements of local law.
- Conduct an annual audit of complaints to ascertain the need for changes in training or policy.
- Maintain statistical and related information to identify trends involving all complaints of use of force, officer misconduct, and/or abuse of authority.
- Track complaints against individual employees to assist in employee risk analysis.

- Provide the Chief of Police and the Assistant Chief of Professional Standards with quarterly summaries of complaints and final dispositions against officers.

### **NOTIFYING COMPLAINANT REGARDING STATUS OF COMPLAINT INVESTIGATION**

- Upon receipt of a complaint, the investigator shall provide a copy of the Complaint Form to the complainant, acknowledging its receipt.
- The assigned investigator of an Internal Affairs case is responsible for providing periodic status reports to complainants on all pending internal investigations. Generally, internal investigators should maintain at least monthly contact with their complainants and provide them status reports on the investigation, as far as practical. Such contact can be accomplished by telephone or email, in lieu of a written letter.
- For formal investigations, the reporting party shall be notified as indicated below, by the Chief of Police or designee, informing him/her of the results of the Department's Investigation. Such notification should normally occur within fourteen (14) days after the conclusion of the investigation and the determination by the Chief of Police of the "Finding of Facts."

### **CONFIDENTIALITY OF COMPLAINTS**

- All employees who have knowledge that an open Internal Affairs case is pending are prohibited from discussing material issues related to the case.
- Exemptions include:
  - Employees subject to the investigation when consulting with Union or legal representation, in accordance with supervisory directives, testifying at an official hearing regarding the matter, or otherwise authorized by law, policy, or regulation.

### **INVESTIGATIVE INTERVIEWS AND PROCEDURES OF OFFICERS**

- Prior to being interviewed, the officer against whom a complaint has been made shall be advised of the nature of the complaint and be allowed to review the complaint form.
- All interviews will be conducted while the Officer is on duty, unless the seriousness of the investigation or other justifiable reason is such that an immediate interview is required.
- The complete interview shall be electronically recorded. The recording will note the time at which breaks are taken in the interview process, who requested the

break, and the time at which the interview resumed. At the conclusion of the investigation, the Union will be provided with a copy of all interviews on a CD or DVD. The CD or DVD will be provided to the Internal Affairs Unit by the Union.

- The Officer shall be provided with the name, rank, and command of all persons present during the questioning.
- Subject to the approval of the Chief of Police, Officers will be administered the applicable Warnings prior to the interview:
  - Garrity Warnings: For compelled statements if the inquiry is administrative.
  - Miranda Warnings: Where the inquiry is criminal and the officer is under arrest or in custody.
- Officers may have Union representation during the Internal Affairs interview.
  - Officers, under internal (administrative) review, may have present with them a union representative during any administrative internal investigative interview so long as the representative is not involved in any manner (*i.e. a witness or subject of the complaint*) with the incident under investigation, or a conflict of interest does not exist. (*Note: refer to Collective Bargaining Agreement (CBA)*).
  - The representative's role is primarily that of an observer and shall not be permitted to interrupt the interview except for the purpose of advising and/or conferring with the officer who is concerned about a contractual right.
  - In criminal investigations the employee has the right to talk to legal counsel or to have one present during questioning.

## EXAMINATIONS AND SEARCHES

- The department may direct an officer to undergo substance abuse testing consistent with the CBA. The Chief can direct an officer to undergo psychological and/or medical testing consistent with the CBA.
- An on-duty supervisor may direct an officer to submit to a breath, blood, or urine test when there is reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct, and is required to submit to such tests as the result of either being involved in a traffic accident with a department vehicle or involved in a discharge of a Department issued firearm whether on or off-duty.

- An officer may be required to participate in a lineup if it is used solely for administrative purposes. This does not in any way affect the requirements of a legal order to participate.

### **TIME LIMITS ON COMPLETING INTERNAL AFFAIRS INVESTIGATIONS**

- All administrative investigations, including Internal Investigations ("I" cases) and Civilian Complaints ("C" complaints), shall be a priority for the Department, and should be expeditiously investigated and reviewed. These investigations should be completed and forwarded to the Chief of Police for review within ninety (90) days. The Chief of Police may waive the 90-day requirements for complex investigations and investigations involving extenuating circumstances.
- Time limits governing disciplinary action which may arise from internal investigations for police officers and civilian employees shall comply with any applicable State or Federal statutes, City of New Haven Ordinances, and provisions of the respective labor agreements for sworn and non-sworn employees.
- Investigators shall be held accountable for the quality of their investigations. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when an investigator fails to conduct a timely and thorough investigation.

### **2.08.08 REVIEW OF THE INVESTIGATION**

- The designated internal affairs investigator's supervisor shall review the investigation to determine the thoroughness, completeness, accuracy and objectivity of the investigation.
- The completed report of investigation, disciplinary recommendation if any and the recommended disposition shall be reviewed by the Chief of Police or the designee of the Chief of Police.
- The complainant shall be promptly notified in writing of the status and/or disposition of his or her complaint at the conclusion of the investigation by the Chief of Police or his designee.
- Findings of completed investigations and disciplinary recommendations if any, shall be promptly conveyed, in writing, to the employee through his or her chain of command.

**2.08.09 CASE DISPOSITIONS — STANDARDS**

For each charge or allegation of misconduct or malfeasance which forms the basis for an internal affairs investigation, such charge or allegation shall be classified upon closing of the investigation in one of the following manners:

**EXONERATED:** The investigation determined by a preponderance of the evidence that the alleged act did occur, but the officer engaged in no misconduct because, the act was lawful, justified, and proper, or the investigation determined by a preponderance of the evidence that misconduct or malfeasance was committed, but not by the subject of the investigation.

**UNFOUNDED:** The investigation determined by a preponderance of the evidence that the misconduct or malfeasance complained of did not occur.

**NOT SUSTAINED:** The investigation was unable to determine by a preponderance of the evidence whether or not the misconduct or malfeasance complained of occurred, or whether or not it was committed by the subject of the investigation.

**SUSTAINED:** The investigation determined by a preponderance of the evidence that the misconduct or malfeasance complained of occurred and that it was committed by the subject of the investigation.

**MISCONDUCT NOT BASED ON ORIGINAL COMPLAINT:** The investigation determined by a preponderance of the evidence that other misconduct or malfeasance which was not the basis for the original investigation occurred, was discovered during the course of the original investigation, and was committed by the subject of the investigation.

**WITHDRAWN:** At some point prior to the completion of the investigation, the complainant notified the Department that he/she wished the investigation to be discontinued and concurrence for this action was obtained from the Chief of Police.

**SUMMARY ACTION:** Supervisory action in the form of an oral reprimand, or counseling documented in writing, was taken by an employee's supervisor or commander for minor violations of department rules, policies or procedures as defined by this Department. Summary actions are the lowest level of supervisory action or remediation.

**RECONCILED:** At the discretion of the Chief of Police, the process of reconciliation may be encouraged in lieu of any of the above dispositions. When authorized by the Chief of Police, supervisors receiving complaints shall to the extent possible, bring together the complainant and the officer or employee involved in minor violations and attempt reconciliation. This may be used where the complaint is from a misunderstanding on the part of the affected officer, employee or the complainant. Reconciliation may be employed for complaints of a minor nature that do not reflect:

- Discredit upon the Department.

- Discredit upon the involved employee.
- Commission of a criminal offense.
- Allegations of racism, bigotry or prejudice against any race, religion, creed, national origin, sexual orientation, or circumstances beyond the individual's control.

Reconciliation must be documented through the chain of command to the Chief of Police or his or her designee. Reconciliation does not preclude further corrective action on the part of the Department.

### **DISCIPLINE AND DISPOSITION**

- Disciplinary action shall be administered in accordance with Department policy.
- Final disciplinary authority is vested in the Chief of Police and the Board of Police Commissioners.
- Following final disposition of the complaint, a letter shall be sent to the complainant and officer, addressed from the Chief or his/her designee, explaining the final disposition.
- In cases where there exists probable cause to believe that a fraudulent complaint was logged (*officially documented*) in violation of Connecticut law, the case may be referred to the State Attorney's Office for a prosecutorial determination upon approval by the Chief or his/her designee.

#### **2.08.10 INTERNAL AFFAIRS RECORDS AND CONFIDENTIALITY**

- Internal Affairs SHALL be informed of all final disciplinary decisions.
- Internal Affairs SHALL forward a copy of all final disciplinary decisions to the Department's personnel authority.
- Internal Affairs case files and information shall be maintained separately from personnel records.
- Internal Affairs information is considered confidential and will be retained under secured conditions within the Internal Affairs Unit.
- Internal Affairs case files and personnel dispositions may not be released to any source without prior approval of the Chief, unless otherwise provided by law.
- Case investigation files shall be retained for a period of time as defined by law, CBA, or the Chief.

**2.08.11 TRAINING**

All supervisory personnel will be required to attend training on the department's Complaint Policy and the responsibilities of supervisors conducting internal investigations upon the implementation of this policy.

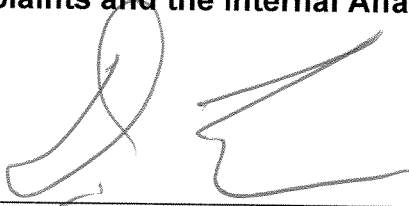
All supervisory personnel will be required to attend periodic refresher training, as determined by the department, regarding the policies and procedures contained herein and professionally accepted practices related to conducting internal investigation.

**2.08.12 PUBLIC INFORMATION AND ACCESS**

The Chief of Police or his/her designee will:

- Ensure informational materials are made available to the public through police personnel, the police department facility, the police Department web site, the general government web site of the Department, the internet, libraries, community groups, community centers and at other designated public facilities.
- Ensure that copies of this policy and complaint forms are available at City Hall. This information should include relevant phone numbers and any addresses where complaints can be made. This information must explain the complaint process in English and Spanish.
- The complaint policy and forms should be made available online on the Department Internet website

**This General Order supersedes the sections of Rule 16 pertaining to civilian complaints and the Internal Affairs function of the Department.**



Dean Esserman  
Chief of Police



Date