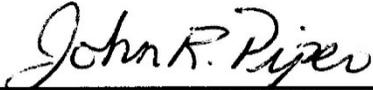




WINCHESTER POLICE DEPARTMENT OPERATION ORDER

NOTE: This policy is for internal use only, and does not enlarge an employee’s civil liability in any way. It should not be construed as the creation of a higher standard of safety or case in an evidentiary sense, with respect to third party claims. Violation of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

Number 1-16		Effective Date 7/31/2020	Review Date 3/1/2020	Reviewing Division Administration
Subject Administrative Investigations		<input type="checkbox"/> New Directive <input type="checkbox"/> Amends <input type="checkbox"/> Replaces: <input checked="" type="checkbox"/> Revised:		This policy shall apply to personnel assigned to the following divisions: <input checked="" type="checkbox"/> All Personnel <input type="checkbox"/> Patrol Division <input type="checkbox"/> Administration Division <input type="checkbox"/> Investigation Division
References VLEPSC: ADM.18.02-.09, ADM.25.01 CALEA				
 <hr/> Chief of Police or Designee		<p style="text-align: right;">July 31, 2020</p> <hr/> <p style="text-align: right;">Date</p>		

I. PURPOSE

The purpose of this order is to establish procedures to be followed when it is necessary to investigate the actions or conduct of any employee of the Police Department. These procedures will ensure the complete examination of all facts and circumstances relevant to the incident being investigated, and will safeguard the rights of employees who are the subject of such investigations.

II. POLICY

The Department's image and reputation depends on the personal integrity and discipline of all Department personnel. The Department must competently and impartially investigate all allegations of misconduct, violations of Department rules or regulations, and expressions of dissatisfaction with policy, procedure, or practice. The Department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In these situations, actions and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for investigating allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of law enforcement work.

III. PROCEDURES - GENERAL

A. Types of Incidents to be Investigated

1. Complaints from members of the general public concerning employee misconduct.

2. Alleged violations of departmental rules and regulations reported to supervisory or command personnel by members of the Department, or actions observed by supervisory or command officers which appear to be a violation of law or Department regulation.
3. Incidents which do not constitute any reasonable suspicion of misconduct by an employee; however, the nature of the incident merits investigation for the purpose of documenting all relevant facts.
4. Notice or expression of dissatisfaction with a policy, procedure, or practice of the agency. See Section III, D for processing.

B. Complaints

A complaint can come from both an internal or external source. A complaint is an indication of a potential problem or misunderstanding. The openness of the Department to the acceptance of a complaint is a principle element of police professionalism, accountability to the public, and community responsiveness. It can be originated from:

1. Individuals: aggrieved person, third party, or anonymous
2. Department members
3. Another government agency
4. Media report
5. Civil claim

C. Receipt and Acceptance of Complaints

A complaint may be presented to the Department in person, by phone, electronically, or by letter. Employees will be courteous and prompt and will not discourage or delay an individual from making a complaint.

1. In Person Complaints:
 - a. Should be received by the on duty supervisor and without delay.
 - b. If the complainant cannot wait for the supervisor, ECC personnel will obtain the complainant's contact information. The supervisor will contact the complainant as soon as available.
2. Telephone Complaints:
 - a. ECC will notify the supervisor that a complaint has been received by telephone.
 - b. If available, the supervisor will take the call immediately. If not, ECC personnel will transfer the complainant to the supervisor's cell phone with instructions to leave a voicemail.

3. Electronic Complaints are received by the Deputy Chief of Police through the website.
4. Anonymous complaints shall not be refused.

D. Supervisor Responsibilities

1. It is preferred that the complainant complete WPD Form 92, Reports of Complaints against Police Personnel. However, supervisors should never force a complainant to complete the form or refuse to take the complaint because the complainant wouldn't complete the form. Should a complainant not complete the form, it is the supervisor's responsibility to complete the form.
2. Expressions of dissatisfaction with a policy, procedure, or practice shall be documented on WPD Form 168.
3. Complaints regarding disagreement over the validity of a traffic or parking summons should be referred to the proper court system and not handled through the complaint process.

E. Responsibility for Handling Complaints

1. As a rule, complaints will be handled and investigated by a designated member of the Winchester Police Department.
2. Complaints alleging improper conduct, brutality, or misconduct involving multiple personnel or supervisory personnel may be investigated by an outside agency/person upon request of the Chief of Police in consultation with the Director of Human Resources and City Manager.

F. Complaint Handling and Investigative Procedures

1. The Deputy Chief of Police is responsible for oversight of the acceptance, investigation, and adjudication of all complaints and investigations.
2. When a complaint is received, it is the supervisor's responsibility to ensure WPD Form 92 or Form 168 contains all required information. Once completed, the supervisor will notify the complainant that the initial complaint report is complete. The supervisor will then forward the complaint directly to the Deputy Chief of Police, who will conduct an initial review.
3. The purpose of the initial review is for entry into the confidential administrative investigation database. The database will contain the name of the employee and complainant, date of the incident, nature of the allegation, date of completion, and the final disposition. Additionally, the initial review will also determine one of the following appropriate follow-up actions:

- a. When the review reveals that the complaint does not qualify as the type of incident to be investigated, as described herein, this shall be communicated to the complainant. The proper notation will be made in the administrative investigation database, including the reason(s) the complaint did not qualify for an investigation;
 - b. Return the complaint back to the officer's supervisor for the identified appropriate handling;
 - c. Open and assign an investigation using the format described in section VI of this policy; or
 - d. Order an investigation to be completed by a third-party investigator(s). This may only be ordered at the direction of the Chief of Police, in consultation with the Director of Human Resources and the City Manager.
4. An employee who receives a citizen's complaint by mail or other delivery service shall place the correspondence and envelope in a sealed envelope and forward it to the Deputy Chief of Police.
 5. If the supervisor determines that the complainant is apparently under the influence of an intoxicant or drug, apparently suffers from a mental disorder, or displays any other trait or condition bearing on his or her credibility, the supervisor or investigator shall note these conditions on the reverse side of the complaint form. Any visible marks or injuries relative to the allegation shall be noted and photographed.

G. Disposition of Complaints

In the disposition of complaints, the Deputy Chief of Police or his/her designee shall:

1. Supervise the investigative activities and final dispositions;
2. Regarding serious incidents, maintain close liaison with the Commonwealth's Attorney in investigating alleged criminal conduct. Where liability is at issue, the Deputy Chief of Police or his/her designee shall similarly maintain contact with the City Attorney and Human Resources Department.
3. Notify the complainant in writing that the complaint has been finalized. This can occur by email or through U.S. Postal Service. For investigations exceeding sixty (60) days, the Deputy Chief of Police or his/her designee will contact the complainant explaining the circumstances of the delay;
4. Maintain confidential complaint files separate from personnel files; and
5. Take appropriate disciplinary action following the investigation.

IV. PROCEDURES – INQUIRIES

A. General

There may be times when an inquiry into the actions of an employee is warranted, even when there is neither an allegation of wrongdoing nor any determined violation of law or Department policy. In these instances, the actions of the employee are such that they merit further information concerning facts and circumstances to determine if an administrative investigation is necessary.

B. Authority

The Deputy Chief of Police will be responsible for directing any initial inquiry and entry into the administrative investigation database.

C. Interview

Employees questioned during an initial inquiry will be advised about the nature of the inquiry. If during questioning, the employee reveals or confirms an action of misconduct, the questioning shall cease. The interview can continue once the employee has been provided with an Investigation Acknowledgement Form, WPD-98 and completed City of Winchester Pre-Disciplinary Hearing Form, in accordance with Virginia Code § 9.1-500 *et seq.* At that time, the inquiry will then transition into an administrative investigation.

D. Conclusion

At the conclusion of the inquiry, the Deputy Chief of Police will make a determination as to any further action. If disciplinary action is necessary as a result of the inquiry, a verbal counseling is the highest level of action that can be taken. Any other action will require the completion of administrative investigation.

V. PROCEDURES - INVESTIGATIVE

A. General

Two types of investigations may take place: administrative and criminal. Different rules govern interviews of employees in each case. Before any interview, the employee under investigation shall receive notice of the complaint. This notice will include a copy of the original complaint, the name and rank of the investigating officer and of any individual to be present during the questioning, the nature of the investigation, a City of Winchester Pre-Disciplinary Hearing Form, and the Investigation Acknowledgment Form WPD-98, in accordance with Virginia Code § 9.1-500 *et seq.* Administrative and criminal investigations may be conducted simultaneously, but investigators assigned to either may not collaborate or share information. At the conclusion of the criminal investigation, the administrative investigator may obtain information from the criminal investigator.

B Interview for Administrative Purposes

1. Before an administrative interview, the employee shall sign the City of Winchester Pre-Disciplinary Hearing Form and the Investigation Acknowledgment Form WPD-98. If an employee refuses to sign the aforementioned forms, provide a statement, or cooperate in the investigation, the Deputy Chief of Police will be notified.
2. Any and all questioning of an officer shall take place at a reasonable time, preferably when the officer under investigation is on duty, and at the office of the investigating officer or at the police department station. However, circumstances may exist in which matters being investigated are of such nature that immediate action is required.
3. Employee interviews and statements in an administrative investigation are considered compelled. Therefore, they are not admissible in any criminal proceeding, in which the employee is a defendant, except as provided by the law.
4. Statements may be taken in writing or recorded. Should a statement not be recorded, the employee must initial each page of the written statement prepared by the interviewer once complete.

C. Interviews for Criminal Investigative Purposes

1. Employees interviewed for the purpose of possible criminal prosecution shall be provided with the following:
 - a. Given Miranda rights. The Miranda admonition includes the provision that an attorney may be present at an interview. Although technically the employee has no right to counsel until he or she has been criminally charged or their freedom has been deprived, the Department wishes the employee to have the option.
 - b. Notified that if he or she asserts his or her right not to answer questions, no adverse administrative action will be taken based upon the refusal. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.

V. **INVESTIGATIVE TOOLS AND RESOURCES**

A. General

In addition to interviews of the employee and witnesses, the Deputy Chief of Police may require other activities or documentation in support of a complaint investigation

or administrative investigation. This could include, but is not limited to, medical and laboratory examinations, audio and video recordings, financial disclosure statements, or polygraph examinations.

B. Medical and Laboratory Examination

When reasonable suspicion exists, the Deputy Chief of Police or designee may require a Department employee to submit to a medical, psychiatric, or laboratory examination test for alcohol or drug use. If a blood or urine specimen is taken from an officer for the purpose of determining whether the officer has used drugs or alcohol, the procedures set forth in Virginia Code § 9.1-501 (3) shall apply. Refusal to submit to the examination could be grounds for immediate relieve of duty, disciplinary action, and may result in the employee's dismissal. Consultation for this may be done with the Human Resource Department.

C. Financial Disclosure Statements

No officer shall be required or requested to disclose any item of his property, income, assets, source(s) of income, debts, or personal or domestic expenditures, including those of any member of his or her family or household unless: 1) such information is necessary in investigating a possible conflict of interest with respect to the performance of his or her professional duties; or 2) such information is related to an investigation; or 3) such disclosure is required by law. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding.

D. Department Property

Property assigned to the employee, but belonging to the Department, is subject to inspection. Department property includes, but is not limited to, files, storage lockers, desks, electronic devices and vehicles.

E. Polygraph

In certain instances, a polygraph examination may be used in an effort to confirm or disprove inconsistencies after all other reasonable methods have been exhausted. The Chief of Police may request an employee to submit to a lie detector test related to a particular internal administrative investigation concerning allegations of misconduct or criminal activity. The results of the polygraph test will not be the sole basis for a disciplinary determination or establishing the elements of an allegation. Additionally, the analysis of the polygraph examination will not be admissible in any disciplinary proceeding.

F. Confidentiality

To the extent possible, all information relating to an investigation shall be kept confidential. All records and documents relating to an investigation shall be kept in a secured manner at all times during the investigation, with access by and/or distribution to authorized personnel only.

VI. DOCUMENTATION OF COMPLAINT

A. Procedures

1. Anytime an administrative investigation case is assigned for investigation, the investigating officer shall prepare a case file in the following format.
 - a. Cover page;
 - b. Employee Forms section (Section A) with coversheet. This section will include the Pre-disciplinary Hearing Form and Investigation Acknowledgment Form;
 - c. Complaint section (Section B). This section will contain the original complaint material and any offense reports, call for service reports, and photos;
 - d. Investigation section (Section C). This section will contain the investigative report; and
 - e. Miscellaneous section (Section D), which will contain any investigative information, including all notices provided, not already provided in the case file.
2. In the course of the investigation, all pertinent facts shall be carefully documented including all interviews.

B. Investigative Report Format

The completed investigation narrative shall follow the following format:

1. Statement of Incident – This is a brief summary of the incident.
2. Complaint - This is a restatement of the original complaint and how it was received. This should include each potential violation of the policy and procedures for both the Department and the City.
3. Investigation - Record all pertinent facts and interviews.
4. Conclusion – Includes a list of each allegation investigated, the findings of facts and conclusions drawn for each allegation, and the associated policy.

VII. ADJUDICATION OF COMPLAINTS

A. Classification

Completed administrative investigations shall be classified as:

1. Unfounded - no truth to allegations;
2. Exonerated - allegations true, but result in adherence to proper and appropriate procedures and techniques;
3. Not sustained - unable to verify the truth of the matters under investigation;
4. Sustained – sufficient evidence to support the allegations as true.
5. Policy review – employee acted within policy, but the investigation reveals a need for policy review.

B. Investigation Review

The completed administrative investigation shall be submitted for final review to the Deputy Chief of Police to determine if it is complete or requires additional investigation. Upon satisfaction, the Deputy Chief of Police shall acknowledge approval by use of WPD-144, Internal Routing Form.

C. Determination of Actions

The Deputy Chief of Police shall make a determination, in consultation with the Chief of Police, on the appropriate action and assignment to carry it out. Actions could be disciplinary in nature and addressed in General Order 1-17 and CEMS 0-21. For sustained violations resulting in disciplinary action, a disciplinary hearing shall be scheduled.

D. Hearing Procedures

The purpose of the disciplinary hearing is to provide the employee with an opportunity to hear the evidence obtained during the administrative investigation and to respond to that evidence. This initial disciplinary hearing is not an appeal and is not subject to allowance for representation, legal or otherwise. The following guidelines should be used to conduct the hearing:

1. A reviewing authority, holding the rank of Captain, Deputy Chief, or Chief will be determined. The reviewing authority will conduct the hearing.
2. The investigator conducting the investigation should attend the hearing and present an oral summary of the results of the investigation.
3. The employee shall be provided an opportunity to present statements and other evidence on their behalf. If the employee has questions for the investigator, they should be directed to the reviewing authority.

4. The reviewing authority has the ability to request clarification or ask the investigator and employees follow-up questions. Both must comply with the reviewing authority's request and are subject to misconduct for non-compliance or being untruthful.
5. Prior to the conclusion of the hearing, the reviewing authority should ask the following questions to the employee:
 - a. Are there any other witnesses to this incident that should be interviewed?
 - b. Are there any other investigative steps you feel are necessary to obtain all the relevant facts?
 - c. Do you have any concerns about the conduct of the investigation?
6. Documentation of the hearing and a final determination will be made by the reviewing authority on WPD-185, Advance Notice of Disciplinary Action, with a copy provided to the employee

E. Investigation Records

1. The complaints and administrative investigative files shall be kept in a secure area and shall be maintained as long as Library of Virginia record retention requirements dictate.
2. Completed investigations will be stored and secured in the City of Winchester Human Resources Department. Copies of sustained complaints shall be filed in the individual employee's Department personnel file.
3. The Chief of Police shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy.
4. The Chief of Police shall publish an annual or other periodic summary of complaints that shall be made available to the public.