

FALMOUTH POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

Effective Date: December 17, 2013	Number: Policy #65
Distribution: All Personnel	Rescinds:
Subject: Internal Affairs and Complaints Against Law Enforcement Personnel	
Signature, Chief of Police:	
Reviewed/Revised: Oct. 7, 2013, December 17, 2013; Jan. 30, 2020	
Refer to: Policies #5, 66, 84, 85	

POLICY

The image of this agency depends on the personal integrity and discipline of all agency employees. To a large degree, the public image of this agency is determined by the professional response of this agency to allegations of misconduct against it or its employees. This agency must competently and professionally investigate all allegations of misconduct by employees and complaints bearing on the agency's response to community needs.

Given that this is a statutorily mandated policy, officers must abide by this agency's policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees.¹

PURPOSE

To describe procedures for making complaints against agency personnel, investigating complaints, and to list and define the dispositions of complaints.

DEFINITIONS

- A. Complaint: Means any allegation of employee misconduct which, if true, would constitute a violation of law or the standard operating procedures of this agency.
- B. Employee: Means any full-time or part-time person, whether paid or volunteer that represents or works for this agency and approved by the Chief Law Enforcement Officer (CLEO) or designee.
- C. Investigator: Means any supervisory officer who is assigned by the CLEO or designee, to formally investigate, or assist in the formal investigation of, any complaint of employee misconduct.

¹ 25 M.R.S. § 2803-B

PROCEDURES - General

- A. This agency encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Agency employees shall receive complaints courteously and shall handle them efficiently. All employees are obligated to explain to inquiring citizens the complaint procedures.
- B. This agency recognizes that its employees are often subject to intense issues in the discharge of their duties. Employees must remain neutral under circumstances that are likely to generate tension, excitement and emotion. In such situations, words, actions and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to follow proper procedures for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of their work.
- C. A copy of "How To Make A Complaint" will be posted in the public area of this law enforcement agency, provided to media representatives, and may be given to any citizen requesting information on how to make a complaint against the agency or an employee of the agency. (See Appendix #1).
- D. Responsibility for Handling Complaints:
 - 1. As a rule, complaints regarding law enforcement operations will be handled through the chain of command. Complaints involving how law enforcement service is provided, a failure to provide service, or improper attitudes or behavior, will normally be investigated and handled by the supervisor. The CLEO may ask an investigator from another agency to undertake the investigation.
 - 2. The determination whether or not an Internal Affairs (IA) Investigation is officially opened will be determined by the CLEO. The CLEO may consider, but is not limited to the following issues in determining if an incident warrants an official IA investigation.
 - a. Situations when a supervisor insists.
 - b. Situations when citizens insist.
 - c. Repeated patterns of performance deficiencies.
 - d. Alleged criminal conduct.
 - e. Serious complaints.
 - 3. The CLEO will be notified of all complaints by any supervisors receiving a complaint on law enforcement agency employees.
- E. Receipt of Complaints:
 - 1. Complaints, regardless of nature, can be lodged in person, by mail, electronically, or by phone at any time. As part of the follow-up investigative activity, citizens making complaints by mail, electronically, or phone will normally be interviewed and a written, signed complaint prepared. Anonymous complaints will be followed up to the extent possible.
 - 2. Every effort may be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints. Any employee of this agency, who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action.
 - 3. Normally, a citizen with a complaint will be referred to the CLEO or designee who will assist the citizen in recording pertinent information. The CLEO or designee will, if appropriate, conduct a preliminary investigation.

4. If the supervisor or other investigators determine that the complainant displays any trait or condition that may bear on the complainant's credibility or reliability, they shall note such conditions on the reverse side of the complaint form. Any visible marks or injuries relative to the allegation shall be noted and photographed.
- a. Prisoners or arrestees may also make complaints, although circumstances may require an agency representative to meet the complainant at a jail or prison for an interview. If appropriate, the investigator will have photographs taken of the prisoner's injuries.
5. Any agency member receiving a citizen complaint through the U.S. mail or electronic media shall place the correspondence in a sealed envelope and forward it to the CLEO, who will determine the investigative responsibility.
6. Complaints received on the telephone by employees will be courteously and promptly referred to the supervisor. The employee shall record the name and telephone number of the complainant and state that the supervisor shall call back as soon as practicable.
7. This procedure may be used by employees making complaints that fall within the scope of this policy.

F. Disposition of Complaints: The CLEO shall:

1. Notify the complainant, in writing, as soon as practicable, that the agency acknowledges receipt of the complaint and that the complaint is under investigation. The investigation will be completed within 30 days, and the complainant and the employee(s) will be advised of the outcome. If the investigation exceeds 30 days, the CLEO shall write the complainant and the employee(s) a letter explaining the circumstances of the delay.
2. Maintain in a secure area a record of all complaints against the agency and its employees, and protect the confidentiality in accordance with Maine law and applicable collective bargaining agreements, any other personnel policies or standard operating procedures. (For State employees,² for County employees,³ and for Municipal employees⁴). Complaint files will be maintained separately from personnel files, except that any records of disciplinary action shall be maintained in the personnel files.
3. Take appropriate disciplinary action following the investigation.
4. If in the judgment of the CLEO, a fair and impartial investigation is impossible within agency or at the request of the complainant, the CLEO may assign an investigator from outside the agency.
 - a. In such case the CLEO will ensure that the investigation is conducted in accordance with the collective bargaining agreement, any other personnel policies or any standard operating procedures agreement, and in a legal and professional manner.
5. Maintain close liaison with the Office of the District Attorney and/or the Office of the Attorney General in investigating alleged criminal conduct. Where liability is at issue, the CLEO shall similarly maintain contact with the agency attorney.

PROCEDURES - Investigative

Two types of investigations may take place; administrative and/or criminal. Different rules govern interviews of employees in each case. In all cases involving alleged criminal conduct

² 5 M.R.S. § 7070

³ 30-A M.R.S. § 503

⁴ 30-A M.R.S. § 2702

by a law enforcement employee, the CLEO or designee shall contact the Office of Attorney General and/or the Office of the District Attorney for advice. In conduction investigations, investigators shall comply with relevant provisions of the collective bargaining agreement.

A. Interview for Administrative Purposes: The CLEO or designee shall advise the employee under investigation:

1. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted.
2. If you decline to respond voluntarily, I will direct you to respond fully and truthfully to all of my questions. Refusal to answer will result in disciplinary action.
3. If you do not respond voluntarily to my questions and I direct you to respond, I must provide you a Garrity Warning as follows:

"I wish to advise you that you are being questioned as part of an official investigation of this agency. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to discipline, up to and including termination of your employment."

"If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent agency charges."

4. The employee is entitled to have a union representative present during the interview.

B. Interviews for Criminal Investigative Purposes: The interviewer shall advise the employee under investigation:

1. If the employee is the subject of a custodial interrogation, the employee will be given the Miranda Warning.

C. All administrative and criminal investigations shall be conducted without unreasonable delay. An employee shall be advised of the final outcome of the administrative investigation in writing within 30 days of the interview. If for any reason the investigation cannot be conducted within 30 days, the employee being investigated shall be given an explanation of the delay and be advised of the outcome within 10 days of the completion of the investigation.

PROCEDURE – Adjudication of Complaints

- A. Completed investigations with a written conclusion based on the facts determined as a result of the investigation shall be maintained permanently in internal affairs files secured in the CLEO's office. The final written decision, with any relevant supporting documentation regarding any disciplinary action will be filed in the individual employee's agency personnel file with a copy in the internal affairs files.

APPENDIX # 1
HOW TO MAKE A COMPLAINT

1. If you wish to make a complaint about the actions of an employee or about any aspect of our law enforcement operation, please:
 - a. Come to the agency and tell any employee that you want to make a complaint; or
 - b. Call the agency or the town/city/county manager's office and tell the person answering the phone that you want to make a complaint; or
 - c. Write your complaint and mail it to the Chief Law Enforcement Officer.
 - d. Write your suggested resolutions.
2. A supervisory employee will assist you in filling out a report of complaint against law enforcement personnel form. This form asks you to identify yourself and then to give specific details about your complaint.
3. Your complaint will then be investigated. You may be contacted and asked additional questions about your complaint.
4. If the investigation of your complaint is going to take a long time, you will receive a letter telling you approximately when you may expect a reply.
5. When your complaint has been investigated, the Chief Law Enforcement Officer will review the investigation and will write you a letter explaining what has been found out about the matter.

APPENDIX #1-A
REPORT OF COMPLAINT AGAINST LAW ENFORCEMENT PERSONNEL
CONFIDENTIAL

Name of Complainant:_____

At What Address and Telephone Number Can You Be Contacted:

Home: _____

Business:_____

Date and Time of Incident:_____

Location of Incident:_____

Name(s) of Employees Against Whom Complaint is Being Filed or
Other Identifying Marks (Car Number, Badge Number, Etc.)

Name:_____Rank:_____Vehicle:_____

Name:_____Rank:_____Vehicle:_____

Name(s), Address(s), Telephone Number(s) or Other Identifying

Information Concerning Witness(s):_____

Statement of Allegation:_____

What do you think is an appropriate resolution?:

If Further Space Is Needed, Use The Reverse Side Of This Sheet

I understand that this statement of complaint will be submitted to this Law Enforcement Agency and may be the basis for an investigation. Further, I sincerely and truly, declare and affirm, that the facts contained herein are complete, accurate and true to the best of my knowledge and belief. Further, I declare and affirm that my statement has been made by me voluntarily without persuasion, coercion or promise of any kind.

I understand that under the Rules and Regulations of this Law Enforcement Agency, the employee(s) against whom this complaint is filed may be entitled to request a hearing. By filing and signing this complaint, I hereby agree to appear before any hearing, if requested by the employee and to testify under oath concerning all matters relevant to this complaint. I further understand that if this alleged complaint, which is made to a Law Enforcement Officer, is false, then I may be charged with the crime of "Unsworn Falsification" pursuant to 17-A M.R.S. § 453, which is a Class D Crime.

Signature of Complainant

Date

Signature of Person Receiving Complaint

Date & Time Received