



Town of Lexington

Police Department

Subject: Internal Affairs:
Maintaining Professional Standards

Reference: 52.1.1; 52.1.2; 52.1.3; 52.1.4; 52.2.1; 52.2.2;
52.2.6(a-e); 52.2.7

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By Order of: Mark J. Corr, Chief of Police

**Policy &
Procedure**

52A

The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chiefs of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 4.01, "Internal Affairs."

GENERAL CONSIDERATIONS AND GUIDELINES

The Lexington Police Department is committed to providing the best possible police services to the community. Critical to this goal is the commitment of each Department employee to perform his or her duties in an honest, fair and impartial manner. The integrity of the Department is dependent on the self-discipline of each employee. When there is an allegation of misconduct, the Department must respond appropriately in order to maintain the community's trust.

The Chief of Police shall have the responsibility for supervising, conducting, coordinating, and maintaining professional standards for the Department. The Chief of Police will establish procedures that are lawful and conducted with the strictest confidentiality. The goals of this internal control function will include:

- Maintaining at all times a high level of acceptable conduct for all members of the department.
- Guaranteeing the right of all personnel to a fair and impartial investigation of complaints made against them.
- Objectively investigating all complaints and, if appropriate, taking proper corrective measures.

52A - Internal Affairs

- Increasing public confidence in the Department's ability to govern and regulate personnel in the performance of required duties.

An internal affairs policy must include the following:

Protecting the Public. The public has a right to expect efficient, fair and impartial law enforcement, therefore any misconduct by Department personnel must be detected, reported, thoroughly investigated and properly adjudicated to assure the maintenance of these qualities.

Protecting the Department. The Department is often evaluated and judged by the actions or inactions of its individual members. Efforts will be made to impress upon each officer a consciousness that his/her individual actions represent the department as a whole before the public. When an informed public knows that its police department honestly and fairly investigates and adjudicates all allegations against its members, this public will be less likely to feel any need to raise a cry of indignation over alleged incidents of misconduct.

Protecting the Employees. Employees must be protected against false or frivolous allegations of misconduct. Although being the focus of an investigation may be an unpleasant or uncomfortable position, the best protection for an employee who has actually done nothing wrong is a complete and thorough investigation conducted in a timely manner that clearly and unequivocally supports the employee's honesty or integrity.

Removing Unfit Personnel. Personnel who engage in acts of misconduct or who have demonstrated that they are unfit for law enforcement work must be removed for the protection of the public, the Department, and other Department employees.

Correcting Procedural Problems. The Department is constantly seeking to improve its efficiency and effectiveness. Occasionally, personnel investigations will disclose faulty procedures that would otherwise have gone undetected. These procedures can then be improved or corrected.

In order to accomplish the goals and objectives of the internal affairs policy, the Lexington Police Department will apply the following principles:

- **All complaints will be investigated.** The purpose of this standard is to require an appropriate investigation of all complaints received from any source, including anonymous complaints. On occasion, malicious and deliberately false accusations will be made. In these instances, there is no better way to invalidate the complaint than by investigating it thoroughly. [52.1.1]
- **All instances of misconduct will be documented and investigated,** including misconduct and infractions discovered by staff and line inspections, with the procedures established in these policies. In this way, the Department will be able to maintain one system for reporting, investigating, and adjudicating misconduct by employees.

PROCEDURES

I. Internal Affairs Component [52.1.3]

- A. **Authority to Investigate.** The Chief of Police shall be responsible for managing and directing the Lexington Police Department's internal affairs component. The Chief of Police, or a designee in his absence, will be notified of all complaints against the Department and/or an employee, see also Department policy **52B - Internal Affairs Investigations and Forms** for additional procedures. [52.2.2]
1. The Chief of Police will review and supervise the investigation of all complaints against the Department and/or its employees.
 2. This policy applies to all employees of the Lexington Police Department.
 3. The Chief may delegate an investigation to the: [52.1.3]
 - a. Captain of Administration,
 - b. Captain of Operations,
 - c. Detective Commander, or
 - d. Other command staff officer when the complaint or infraction is believed to be minor, or when the officer has particular knowledge or skills to facilitate the investigation.
 4. While investigating a complaint of misconduct, the investigating officer shall be delegated the authority necessary to direct and carry out the investigation.
 5. All investigations will begin as soon as possible after the receipt of a complaint. When practical, a written status report should be submitted to the Chief of Police within four (4) days of the complaint, and a regular status update, at least once every ten (10) days until the investigation is completed. [52.1.3]
- B. **Internal Affairs Function.** The principal functions of the internal affairs component includes:
1. Investigating all complaints, regardless of the source, which allege misconduct by Department employees and/or involve complaints challenging Department policies, rules and/or regulations.
 2. Provide direction for recording, investigating and supervising each investigation.
 3. Maintaining the strictest confidentiality of investigations and related records.
 4. A statistical report of complaints will be prepared at least annually.

5. Ensuring that all allegations are investigated and adjudicated in a prompt manner based upon a fair, impartial and thorough investigation.
6. Maintaining a liaison with the Middlesex District Attorney's Office and the Office of the Attorney General of the Commonwealth of Massachusetts, as is appropriate, during investigations that involve alleged criminal conduct.

II. TRUTHFULNESS AND DISCLOSURE REQUIRED

A. **Brady Line of Cases** clearly outlines the precedent that witness credibility can be impeached and, in particular, that police officers must be truthful.

1. **Brady v. Maryland**, 373 U.S. 83 (1963). The United States Supreme Court ruled that a prosecutor must disclose evidence favorable to an accused where the evidence is material either to the issues of guilt or punishment.
2. **Giglio v. United States**, 405 U.S. 150 (1972). The material evidence contemplated by *Brady* includes any information concerning the credibility of a witness for the prosecution.
3. **United States v. Agurs**, 427 U.S. 97 (1976) The Court held that the prosecution's duty to disclose material information exists regardless of whether the defense requests such information.
4. **United States v. Bagley**, 473 U.S. 667 (1985). The prosecution's duty to disclose includes impeachment as well as exculpatory evidence.
5. **Kyles v. Whitley**, 514 U.S. 419 (1995). The Court held that the prosecutor's duty to disclose includes evidence that is known only to police investigators.

B. **The importance of these decisions cannot be understated.** Prosecutors have an affirmative duty to disclose evidence to a defense attorney including information that may impact the credibility of a prosecution witness. The prosecution's disclosure obligation likely includes information related to a police officer's credibility, including but not limited to, any incidents of untruthfulness or deceit in the officer's personal or professional history. Since the prosecution's disclosure duty includes information known only to the police, it is imperative that the Department informs the prosecution of any potentially material information. It is solely the prosecution's decision as to whether the information must be disclosed to the defense.

1. An officer must be truthful during his or her career. Any incidents associated with dishonesty must be disclosed to the prosecution in every court case in which the affected officer is involved.

2. An officer who commits a dishonest act has compromised his or her credibility, both as an investigator and witness. The impact of such conduct upon future criminal prosecutions is so severe that it may lead to discipline of the officer, up to and including termination from employment.

**Civil Service – Case D1-07-376 (2007)
In the Commission’s own Words**

An Appointing Authority is well within its rights to take disciplinary action when a police officer has “a demonstrated willingness to fudge the truth in exigent circumstances” because “[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” See Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 801 (2004); citing City of Cambridge, supra at 303.

The Civil Service Commission has recognized that a police officer must be truthful at all times and that failure to do so constitutes conduct unbecoming an officer. MacHenry v. Town of Wakefield, 7 MCSR 94 (1994). Lying in a disciplinary investigation alone is ground for termination. LaChance v. Erickson, 118 S. Ct. 753 (1998), citing Bryson v. United States, 396 U.S. 64 (1969). The Commission has stated that “it is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens,” Garrett v. City of Haverhill, 18 MCSR at 381, 385 (2005). Specifically, there “is a strong public policy against employing police officers who are untruthful,” Royston v. Town of Billerica, 19 MCSR 124, 128 (2006). Therefore, “a police officer that has lost his credibility can no longer effectively perform the duties of the position,” Pearson v. Whitman, 16 MCSR 46, 50 (2003). As a result, the Commission has often upheld a police officer’s discharge based upon the officer’s dishonesty.”

III. COMPLAINT PROCESSING

- A. The Department will investigate a wide variety of complaints that inevitably vary in their degree of seriousness and complexity. In order to insure that all complaints are handled consistently and correctly, the following principles will be applied:
 1. All complaints, including anonymous complaints, against the Department or any employee will be investigated. [52.1.1]
 2. One uniform and consistent investigative process will be used when professional misconduct is identified.

3. Every supervisor will be responsible for maintaining and reinforcing employee conformity with the professional standards outlined in the Department's policy and procedure manual.
 4. Premature judgments as to the validity or seriousness of a complaint must be avoided. Judgment errors can undermine the integrity of an investigation and/or prevent the Department from pursuing legitimate administrative discipline or criminal complaints.
- B. The Chief of Police will maintain in a secured cabinet a record of every complaint. In addition, each complaint investigation will be logged and identified with a unique number (i.e. 2011-001 represents the year and case number). This number shall be recorded on any document associated with the investigation. [52.1.2]
- C. The procedures for filing a complaint against the Department or any employee will be made available to each complainant, the media or any other interested person. Complaint forms will be available at the police station, on the Department website and at the Town Manager's Office. [52.1.4]
- D. The forms and computer programming to be used in the processing of complaints are shown and explained in Department policy **52B - Internal Affairs Investigations and Forms**
- E. When practical, investigations will be completed within 30 days in order to be responsive to citizen complaints and to give the employee(s) a predictable conclusion. The Chief of Police may authorize extensions and the investigating officer should, when appropriate, make this information known to the complainant and the employee(s) involved.

IV. INFORMAL VERSUS FORMAL COMPLAINTS

- A. **Informal Complaints.** It is common for individuals to call or visit the police station and express concern about an employee's actions or behavior. In many cases, the individual will request or insist that the matter be handled "informally" or they do not want to put the matter "in writing" and/or they do not wish to see the employee "punished." This is a legitimate process. [52.2.1]
1. The procedures for requesting an informal complaint will be included in the instructional material given to the public.
 2. **Informal complaints** provide opportunities for shift supervisors to obtain feedback about employee performance. This feedback will be used to review the incident with the employee. When necessary, the employee should be coached on how to handle the matter differently and, if necessary, the matter should be documented for the annual performance evaluation. [52.2.1]

3. Shift supervisors who receive informal complaints must be alert to situations that require a formal investigation. The reluctance of a person to report an employee's misconduct does not void the need to thoroughly investigate a complaint and/or initiate an internal affairs investigation, when appropriate.
 4. **Informal complaints** will not be documented for statistical purposes. It will be within the shift supervisor's discretion as to whether or not the matter needs to be reported to the Chief of Police or designee.
- B. **Formal Complaints.** All formal complaints will begin with a preliminary investigation that primarily involves a thorough collection of information. This information, having been shared with the Chief of Police or a designee, will be the basis for a subsequent follow-up investigation, as needed.

V. INVESTIGATIONS AND INSPECTIONS

- A. **Special Investigations.** If necessary, the following measures may be authorized:
1. Investigation by State Police, Attorney General or other executive offices.
 2. Compelled testimony by an employee who has exercised his/her right not to answer questions.
 3. Employee may, to the extent permitted by law, be required to: participate in a line-up, submit to a medical or laboratory examination, submit financial disclosure statements, provide photographs for a photographic line-up, or submit to a polygraph examination.
 4. Search of an assigned desk, locker, file cabinet, e-mail, Department issued phone or other computerized information.
- B. **Line and Staff Inspections.**
1. **Line Inspection.** All supervisors are required to maintain records of employee performance and will document minor infractions through routine inspections. In most instances, these matters will be handled through coaching, shift meetings and/or through performance evaluations.
 2. **Staff Inspection.** When a supervisor who does not have direct supervision over an employee observes or documents a problem, the supervisor should bring the matter to the attention of the employee's commanding officer. After discussing the matter, the affected supervisors should decide if a professional standards investigation is required. Follow-up should rest with the direct supervisor, when possible.

52A - Internal Affairs

3. An investigation will be initiated if the inspection process identifies employee misconduct that may result in remedial training, a letter of counseling or disciplinary action.

Professional misconduct is not distinguished by how it is reported. For instance, if a person calls and complains that an employee was verbally abusive during an incident then this has equal standing with a supervisor observing the same employee verbally abusing another employee. If misconduct is reportable, one complaint procedure is necessary to insure that these types of similar complaints are handled consistently.

VI. MANDATORY INVESTIGATIONS [52.2.1]

- A. An investigation will be initiated by the Commanding Officer on-duty whenever:
 1. An employee discharges a firearm (for reasons other than putting down an injured animal), strikes a person with a baton, or otherwise uses force that results in the death or injury to another person.
 2. An officer engages in a sustained high-speed pursuit.
 3. An officer or employee has allegedly harassed another person or otherwise violates another person's civil rights. See also Departmental policy **26A - Harassment and Sexual Harassment**.
- B. Mandatory investigations do not require a complainant. These investigations will serve as a self-regulatory action by the Department. If an aggrieved person is involved, the Commanding Officer should attempt to obtain any information that is relevant to the investigation.

VII. RELIEF OF DUTY

- A. No officer shall be relieved of duty, without pay, as a result of an investigation unless such action is in accordance with the General Laws of Massachusetts, Chapter 31, section 41
- B. The Chief of Police, Captain of Administration, Captain of Operations, Lieutenant Detective Commander, or a Commanding Officer may relieve an employee from duty (administrative leave with pay) for the following reasons: [52.2.7]
 1. **Physically Unfit for Duty.** This includes a personal injury and/or intoxication due to alcohol or drugs. [52.2.7]

2. **Psychologically or Emotionally Unfit for Duty.** When an employee's apparent psychological or emotional state appears to prevent or significantly interfere with the employee's performance of duty. [52.2.7]
- C. The officer relieving the employee from duty will immediately initiate an investigation and immediately notify the Chief of Police, or designee.

VIII. SPECIAL INVESTIGATIONS

- A. The special investigative procedures outlined in this section:
1. Shall only be authorized, in writing, by the Chief of Police or Town Manager; and
 2. Will be specifically directed and narrowly related to the internal affairs investigation.
- B. Absent exigent circumstances, employees will receive written notice from the Town Manager, Chief of Police, or a designee, when any of the special investigative procedures in this section will be used. Employees refusing to comply with the written order may be subject to disciplinary action, including dismissal.
- C. **Special Investigative Procedures** may include, but are not limited to, the following:
1. **Polygraph Examinations** -- M.G.L. Chapter 149, Section 19B permits the use of polygraph examinations by police departments in the investigation of criminal activity. [52.2.6(e)]
 2. **Medical, Psychiatric, or Laboratory Examinations** -- At the expense of the police department, an employee can be required to submit to a medical or psychiatric examination and/or submit specimens for laboratory analysis. [52.2.6(a)]
 3. **Photographs** -- Employees may be ordered to pose for photographs of a type and format as required by the Chief of Police. These photographs may subsequently be used in a photographic line-up. [52.2.6(b)]
 4. **Line-up** -- An employee may be required to participate in an identification line-up. [52.2.6(c)]
 5. **Submission of Financial Disclosure or other Personal Papers** -- Employees may be requested to turn over personal papers which are related to the investigation. If criminal charges are pending, the department will seek to obtain these papers in a manner consistent with applicable law. [52.2.6(d)]

D. **Searching Department Lockers / Desks / File Cabinets / Computers / Cell Phones.**

1. An employee's assigned locker, desk, file cabinet, computer, or cell phone is the property of the Lexington Police Department. As such, no grant or expectation of property right or privacy is expressed or implied.
2. Except in exigent circumstances, only the Town Manager or Chief of Police may authorize these searches.
3. During any search, two command staff officers shall be present.

IX. EMPLOYEE RIGHTS & DUTIES

- A. The investigating officer should interview each employee who may have knowledge pertinent to a complaint. The purpose of the interview is to elicit responses that will assist the Department in determining whether:
1. The alleged misconduct occurred; and
 2. If disciplinary action is warranted.
- B. All employees of the Lexington Police Department are required to:
1. Answer questions that relate directly, narrowly, and specifically to the performance of his/her duties or compliance with Department rules and standards of conduct; and
 2. File all appropriate reports regarding their official duties.
 3. Refusal to answer questions and/or submit official reports may result in disciplinary action, including dismissal.
- C. Employees who are the subject of an investigation will be informed of the complaint as soon as the investigation permits.
- D. Members of a collective bargaining group who are the subject of an investigative interview may request the presence of a union representative.
- E. **MIRANDA.** Employees subject to custodial interrogation will be given their Miranda rights. Absent custodial interrogation, an employee who reasonably believes that answering questions may tend to incriminate him/her, may request the constitutional privileges and protection against self-incrimination. In addition:
1. The employee may not be punished for exercising his/her constitutional right not to answer questions. Disciplinary action may nevertheless be taken as a result of other information that may have been received.

2. If an employee waives his/her Miranda rights, any information provided by the employee may be used in a criminal or administrative disciplinary proceeding.
- F. If an employee refuses to answer questions in the proper execution involving his/her constitutional privilege, the interview will be terminated without compelling the employee to answer. The investigating officer will, as soon as possible, notify the Chief of Police or his designee of the employee's refusal.

X. COMPELLED STATEMENTS

- A. **Employee Exercising Miranda Rights.** Instances may arise when information vital to an investigation is only available from an employee who is exercising his/her Miranda rights, or is otherwise refusing to answer questions. If the information is vital to the investigation, the Chief of Police or a designee will:

1. Consult with the District Attorney's Office to determine if the employee should be compelled to answer questions.
2. If compelled statements are required, the offices of the District Attorney and Attorney General will prepare for presentation to the employee a letter of non-prosecution granting transactional immunity. Specifically, a grant of transactional immunity forever bars the granting government from prosecuting the employee for any offense to which his/her compelled testimony relates.
3. Upon presenting the letter of non-prosecution, the employee is required to answer questions that are directly, narrowly, and specifically related to the employee's official duties, and failure to answer such questions truthfully shall constitute grounds for discipline up to and including dismissal.

- B. **No Criminal Misconduct Involved.**

1. If an employee refuses to answer questions and/or submit official police reports where there is no reasonable belief that a crime is involved, the Chief of Police or his designee may order the employee to provide the requested information.
2. An employee will be required to answer questions that are directly, narrowly, and specifically related to the employee's official duties or compliance with rules and standards of conduct.
3. If at any time, an answer offered by the employee reasonably raises the issue of criminal conduct, then the questioning will stop and the issue of Miranda and compelled testimony will be reviewed again by the Chief of Police.

XI. COMPLAINT ADJUDICATION

- A. At the completion of an investigation, the Chief of Police shall adjudicate each case upon a conclusion of fact in one of the following ways:
1. **Sustained** Sufficient competent evidence has been identified to prove the allegation.
 2. **Not Sustained** There is insufficient evidence to prove or disprove the allegations.
 3. **Unfounded** The allegation is false, not factual, or there is little evidence to support a reasonable suspicion of misconduct.
 4. **Exonerated**
 - a. The incident occurred, but the employee acted properly in accordance with law and Department policy and procedure.
 - b. The Department policy, procedure, rule or regulation is fair, lawful and otherwise deemed to be sound practice.
 5. **Misconduct-Not Based Upon the Original Complaint** Misconduct that was not an issue of the original complaint has been identified.
 6. **Policy and Procedure Failure** Corrective action is needed in Department policy, procedure, rule or regulation.
 7. **Performance Evaluation Issue.** Some matters may through investigation identify behavior(s) best managed by the Commanding Officer through coaching, mentoring and/or skill instruction. These matters may be referred to the Commanding Officer for inclusion in an annual performance evaluation.
- B. If an allegation is sustained (or if other misconduct is identified), the employee may receive coaching and/or corrective training. When appropriate disciplinary action will be taken in accordance with the General Laws of Massachusetts, Chapter 31, section 41. (See also Department policy **26C - Discipline**).
- C. **Limits to Disciplinary Action.**
1. The Chief of Police, in consultation with the Town Manager, may issue disciplinary action that does not exceed five (5) days suspension [the maximum allowed by the Chief of Police without convening a disciplinary hearing with the appointing authority].

2. Disciplinary hearings may be convened by the Town Manager for investigations that may include any disciplinary action up to and including dismissal.
 3. Inasmuch as the Town Manager, as the appointing authority, has independent statutory rights to take disciplinary action under M.G.L. Chapter 31, nothing in this policy shall be construed to impact the Town Manager's right to investigate and determine appropriate disciplinary action, or the rights of other investigatory bodies or entities.
- D. **Appeals.** Employees may appeal any disciplinary action as specifically provided within a written contractual agreement with the Town or as otherwise provided by law.

XII. RELEASE OF INFORMATION

- A. As part of the annual review of disciplinary actions, a statistical summary of investigations will be made available upon request for dissemination to the public and to Department employees.
- B. Employees shall not release or discuss any information pertaining to an investigation with unauthorized persons, nor engage in any independent investigation of a complaint, unless specifically permitted to do so by the provisions of these policies or by the Chief of Police.
- C. After receiving a complaint, the Department will mail a letter to the complainant as verification that the complaint is being investigated. The Department shall also notify the complainant by letter of the complaint's adjudication (i.e. complaint sustained, unfounded, employee exonerated).

XIII. RECORD RETENTION

- A. The Lexington Police Department will permanently retain the annual statistical summary reports.
- B. As required by Massachusetts Law, complaints from citizens, the corresponding investigation, or Department initiated investigations that result in disciplinary action equal to or greater than a reprimand, will be retained outside the personnel file in a separate file.
- C. The following is the Commonwealth's "Police Department Records Disposal Schedule 14-81" as revised in 1996.

52A - Internal Affairs

Type of Record	M.G.L.	Retention schedule
Civilian Complaints, no specific officers named	c.260, ss.3A, 5B	4 years following closure of investigation.
Civilian Complaints, substantiated	c.149, s.52c, c.260, ss.3A, 5B, c.277, s.63	7 years following closure of investigation or 3 years following termination of employment, whichever is later; retain outside personnel file.
Civilian Complaints, unsubstantiated	c.149, s.52C, c.260, ss.3A, 5B	4 years following closure of investigation or 3 years following termination of employment, whichever is later; retain outside personnel file.
Disciplinary Case Files, resulting from administrative reprimand	c.149, s.52C, c.151B, c.260, s.5B, c.277, s.63 29 CFR 1602.30	7 years following closure or 3 years following termination of employment, whichever is later; retain with personnel file.
Disciplinary Case Files, resulting from civilian complaint	c.149, s.52C, c.260, ss.3A, 5B, c.277, s.63	7 years following closure or 3 years following termination of employment, whichever is later; retain with personnel file.
Internal Investigation Case Files	c.151B, c.260, s.5B, c.277. s.63	7 years following closure; retain with personnel files.
Reprimands, administrative	c.149, s.52C, c.151B, c.260, s.5B	4 years or 3 years following termination of employment, whichever is later; retain with personnel file.
Reprimands, resulting from civilian complaint	c.149, s.52C, c.260, ss.3A, 5B c.277, s.63	7 years following closure or 3 years following termination of employment, whichever is later; retain outside personnel file.