

 Lexington Police Department	Subject: Internal Affairs: Investigations and Forms					Policy Number: <h1>52B</h1>	
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By Order of: Michael A. McLean Chief of Police							

GENERAL CONSIDERATIONS AND GUIDELINES

This policy outlines the Lexington Police Department's procedures for investigating any complaint or allegation of intended misconduct. These procedures should guarantee the right of all personnel to a fair and impartial investigation while also insuring that all complaints will be investigated thoroughly and objectively.

Internal affairs investigations are complex due to the controls necessary to satisfy constitutional and statutory laws as well as negotiated agreements. These investigations increase employee sensitivity and directly affect the Department's ability to provide quality police services.

In order to ensure consistent, equitable and thorough investigations, these guidelines explain the forms and procedures to be used in handling complaints.

Note: The forms provided are guidelines and at times reports or other documents may be a sufficient substitute. The goal is to ensure that the information that needs to be collected or distributed is produced in a satisfactory manner.

PROCEDURES

A. INVESTIGATION FORMS

1. The Chief of Police will designate the number and types of forms to be used in the processing of professional standards investigations.
2. The following forms have been approved for the processing of complaints (as necessary, some forms may be modified to satisfy the needs of a particular investigation):
 - a. Complaint Filing Procedures (Form 1);
 - b. Complaint Questionnaire (Form 2);
 - c. Authorization for Release of Medical Records (Form 3)
 - d. Complaint Intake Form (Form 4);
 - e. Complaint Follow-up Investigation (Form 5);
 - f. Complaint receipt letter (Form 6) ;
 - g. Complaint disposition letter (Form 7);
 - h. Complaint Adjudication and Disposition (Form 8);
 - i. Notice of Employee Rights / Potential Criminal Proceedings (Form 9); and
 - j. Notice of Employee Rights / With Immunity (Form 10).
3. All forms necessary for processing an investigation shall be grouped together in a folder on the G Drive marked "Internal Affairs Investigation", in addition hard copies of all forms are available packaged together in individual manila envelopes. These packages will be available in the Commanding Officer's room, Central Records or Detective Bureau. The packages should be used in the following manner:
 - a. One package will be used for each investigation.
 - b. Completed forms should be secured and retained in the envelope.
 - c. When possible, all other reports, photos, and documents should be placed in the envelope when forwarded to the Chief of Police.
 - d. All forms will be formatted for computerized use. If the computerized forms are used, under no circumstances shall a form be saved where other unauthorized persons may open and read the report.
4. All command staff officers shall remain familiar with the forms that are necessary to thoroughly investigate a complaint.

B. RECEIVING COMPLAINTS

1. Courtesy and cooperation should be extended to all persons registering complaints or otherwise inquiring about complaint procedures. This initial contact between a citizen and the Department is an important stage because the complainant is often tense, angry, and emotionally upset.
2. The Department will make available to any person the **Complaint Filing Procedures** (Form 1) that outlines how the Lexington Police Department

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investigates complaints. These forms will be available at the police station, the Town Manager's office, and on-line from the Department's website.

3. **In Person Complaints.** Any person appearing in person at the police station with a complaint, will be:
 - a. Interviewed by the Commanding Officer on duty whenever reasonably possible. Another command staff officer may assist if the Commanding Officer is unavailable.
 - b. Provided the following two forms:
 - i. **Complaint Filing Procedures** (Form 1);
 - ii. **Complaint Questionnaire** (Form 2);
 - c. Given ample opportunity to discuss and describe the circumstances that gave rise to the complaint.
 - d. When appropriate, the complainant should be given a private location to complete the questionnaire.
4. **Telephone Complaints.** When a person telephones the police station with a complaint, the caller should be:
 - a. Interviewed by the Commanding Officer on duty whenever reasonably possible. Another command staff officer may assist if the Commanding Officer is unavailable.
 - b. Encouraged to come to the police station to report the complaint in person.
 - c. If unable or unwilling to come to the station, the caller should be:
 - i. Provided the information from the **Complaint Filing Procedures** (Form 1); and
 - ii. be interviewed on the telephone, obtaining sufficient information to fill-out the **Complaint Questionnaire** (Form 2).
5. **Online Complaint Form.** When an online complaint is received the Chief of Police or a designee will assign an internal affairs investigator to contact the complainant and prepare a preliminary report
6. **Email/ Regular Mail Complaints.** If a complaint is received through the mail, the Chief of Police or a designee will assign an internal affairs investigator to contact the complainant and prepare a preliminary report.
7. **Anonymous Complaints.** The Department will investigate anonymous complaints. Using the information that is available, the complaint will be investigated completely and thoroughly.

8. **Juveniles.**

- a. Juveniles who wish to file a complaint should have a parent or legal guardian accompany them to the police station, and otherwise be available throughout the investigation.
- b. Parents, teachers, clergy or other concerned adults, who wish to file a complaint for a juvenile but are not a witness to the circumstances, should be informed that the juvenile may need to be interviewed at some point in the investigation.

C. WHEN TO ACCEPT COMPLAINTS

1. The legitimacy of a complaint is not always apparent. There are complainants who are hesitant, unwilling or unable to file a complaint. Others are unsure whether or not something inappropriate has occurred. Determining how to manage these situations will not always be easy for the Commanding Officer – the following sections are provided for additional guidance.
2. **The Nature of Complaints.** The Department will not define nor limit the basis upon which a complaint is filed. If a formal complaint is filed, an investigation will be initiated. Complaints that involve trivial matters will be accepted and then adjudicated appropriately. One disposition for minor complaints is referring the matter to the Commanding Officer for performance evaluation purposes.
3. **The Misinformed Complainant.** If a person's complaint is based upon misinformation or a misunderstanding, the Commanding Officer should provide the complainant with accurate information. In these instances, the following may also occur:
 - a. The complainant will be satisfied with the explanation and choose not to pursue a complaint or request that the matter be handled informally by the Commanding Officer, and/or
 - b. The complainant will be permitted to withdraw and retain possession of a completed **Complaint Questionnaire** (Form 2); and/or
 - c. The complainant will elect to file the complaint whereby an investigation will be initiated.
 - d. **Note:** The complainant cannot withdraw a complaint after an investigation has begun. The complainant's desire not to pursue the complaint should be recorded as part of the preliminary (or follow-up) investigative report.
4. **The Uncertain Complainant.** The uncertain complainant will probably be the most difficult to manage. [S]He will call or come to the police station and ask to speak to someone about a problem. When it is unclear whether or not the person has a complaint, the Commanding Officer should:
 - a. Speak privately with the person to ascertain the nature of the problem; and
 - b. Discuss the various actions that can be taken by the Commanding Officer to correct the problem (including the initiation of an internal investigation).

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- c. If the person remains uncertain about filing a complaint and is unsatisfied with other solutions, the Commanding Officer must ask questions that will help the complainant clarify his/her feelings. The complainant should be encouraged to decide on one of the following options:
 - i. File a complaint and initiate an investigation;
 - ii. Allow the Commanding Officer to take supervisory responsibility for the matter as an informal complaint; or
 - iii. Leave with the option of returning at a later time. Under these circumstances, the Commanding Officer should record the encounter in his/her supervisory log or, if appropriate, e-mail a Captain or the Chief of Police.
5. **The Unwilling Complainant.** This person is unwilling to pursue a legitimate complaint and/or is reluctant to cooperate with an investigation. If sufficient information is available, the Commanding Officer should take corrective action as a function of his/her inspectional duties or, if the matter is potentially serious, initiate an investigation without the cooperation of the complainant.

D. INTERVIEWING THE COMPLAINANT

1. The Commanding Officer on duty, or the designated investigating officer, will interview privately any person who wishes to file a complaint.
 - a. Preferably, these interviews will be conducted in a private location at the police station.
 - b. If necessary, interviews may be conducted over the telephone or at another location.
2. The interviewing officer should listen carefully and, as accurately as possible, record:
 - a. The nature of the complaint or allegation;
 - b. The names of the complainant, aggrieved person (if different), witnesses, and the employee(s) involved; and
 - c. A complete and concise summary of the complaint, particularly as it pertains to any alleged misconduct by a department employee.
3. **COMPLAINT QUESTIONNAIRE (FORM 2)**
 - a. Whenever possible, a complainant should complete and sign a **Complaint Questionnaire** (Form 2).
 - b. An investigation will proceed even if the complainant is unwilling, or otherwise unable, to complete a questionnaire. The circumstances of why the **Complaint Questionnaire** (Form 2) is incomplete should be noted and may affect the adjudication of the complaint.

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- i. If the complainant is not the aggrieved person, then the aggrieved person should be contacted and asked to complete a questionnaire also.
 - ii. If the complainant is a juvenile, then a parent, guardian, or other concerned adult should sign and date the questionnaire.
 - iii. Complainant may choose to use some other document to describe the complaint. When possible, reference this material and request the Complainant to sign Form 2.
- c. The questionnaire permits the complainant to:
- i. Identify who was involved in the incident;
 - ii. Describe in their own words the events and reasons for their complaint;
 - iii. Make known whether or not [s]he will be willing to testify at an administrative or criminal hearing; and
 - iv. Affirm the accuracy and truth of his/her written and oral statements.

4. AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS (Form 3)

- a. If an injury, illness or other medical problem is alleged to have been caused by the Department or an employee (or is otherwise pertinent to the complaint), then an **Authorization for Release of Medical Records** (Form 3) should be completed by the complainant.
- b. The release form should specify the types of records to be released and any limitations that may apply.

E. PRELIMINARY INVESTIGATION

1. The **Complaint Intake** (Form 4) will serve as the cover sheet for all investigations. The majority of the form will be completed by the command staff officer receiving the complaint and should include:
 - a. The date, time and how the allegations were received by the department;
 - b. The date, time, location and nature of the allegations;
 - c. Information about the complainant, and the aggrieved person (if different);
 - d. The name of the employee(s) involved;
 - e. The name of any witness(es); and
 - f. A narrative outlining all other information that is available and pertinent to the complaint or the adjudication of the complaint. Additional or separate forms may be used and should be identified as attachments in this section.

Why use the forms? These investigations require confidentiality and documenting a complaint in ProPhoenix does not secure the confidentiality of the material. Printed forms are available and blank forms are available on the G: drive with text and check-off boxes.

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2. **Investigation.** The command staff officer receiving the complaint must make an important assessment before starting an investigation; how serious is the complaint or the nature of the alleged wrongdoing. When in doubt as to how an investigation should be conducted, call an available Captain immediately (or if unavailable the Chief of Police). Commanding officers should be prepared to initiate a preliminary investigation for most minor violations and the preliminary investigation should include, but is not limited to:
 - a. Obtaining complete and detailed information from the complainant (and aggrieved person, if different) when this individual is known;
 - b. Interviewing or at least identifying all available witnesses;
 - c. Interviewing the employee(s) who are involved in a manner consistent with subsection **IX "Notices and Interviews"** of this policy;
 - d. Identifying and securing any physical evidence that may be related to the incident, including photographing injuries or incident scenes.
 - e. Completing and submitting all investigative forms:
 - i. **Complaint Questionnaire (Form 2);**
 - ii. **Complaint Intake (Form 4);**
 - iii. **Notice of Complaint and Interview (Form 9);**
 - iv. **Medical records release (Form 3), if needed.**
3. **Notice to the Chief of Police.** [\[52.2.2\]](#)
 - a. Absent any indication of criminal misconduct, the investigating officer will give an oral notice to the Captain of Operations and/or Captain of Administration (or if both are unreachable, directly to the Chief of Police) before the beginning of the next business day.
 - b. If there is reason to believe that an employee has been involved in (or is accused of) criminal misconduct, both Captains will be informed immediately (or if both are unreachable, directly to the Chief of Police).
 - c. Timely notification will be made to the Chief of Police of all complaints and immediate notification if an injury, significant property damage or an allegation that a crime has been committed is involved. The Chief of Police should be contacted orally to confirm contact has been made.
4. The lower portion of the **Complaint Intake** (Form 4) will be used by the Chief of Police as a supervisory log in order to record:
 - a. The date and time the complaint or investigation was received by the Chief's Office;
 - b. When appropriate, the date when an investigation was ordered and to whom the investigation was assigned;
 - c. The date the investigation was completed;
 - d. The complaint adjudication and disposition; and
 - e. General notes, including dates when special investigative procedures were ordered, appeal dates, etc.

F. FOLLOW-UP INVESTIGATIONS

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1. All complaints (agency and/or employee) will be forwarded to the Chief of Police, or a designee by the next business day. A decision will be made as to whom the investigation will be assigned.
 - a. Complaints that appear to be relatively minor (if found to be true, punishable by 5-days suspension or less) may be returned to command staff officer who received the original complaint for follow-up and closure.
 - b. A Captain or other designee will be assigned to follow-up by the Chief of Police when:
 - i. A preliminary investigation reveals the possibility of criminal misconduct by an employee.
 - ii. An employee refuses to answer questions or file official reports, or exercises his/her constitutional protection from self-incrimination;
 - iii. Special investigative procedures will be necessary to investigate the complaint (see Department policy **52A - Internal Affairs, Maintaining Professional Standards**, subsection VI); and/or
 - iv. There is conduct that may result in disciplinary action exceeding 5-days suspension.
2. The **Follow-up Investigation** (Form 5) will document all further investigative measures taken after the intake process. The follow-up investigator should:
 - a. Give a chronological summary of the information contained in previous reports;
 - b. Identify the measures taken to further investigate the complaint (particularly as they pertain to any special investigative procedures);
 - c. Specifically record the dates and times when follow-up measures were taken; and
 - d. Reference all attachments to the report. The follow-up investigation may be written in some other format, but a hard copy should be attached and referenced on Form 5.

G. COMPLAINANT NOTIFICATION

1. Whenever the Lexington Police Department initiates an investigation (other than minor infractions), the complainant should receive a letter acknowledging that the complaint was received and is being investigated (**Form 6**). [\[52.2.4\(a\)\]](#)
2. Should the investigation extend beyond 30-days, the complainant will be informed of the status of the case every 30-days. [\[52.2.3\]](#) [\[52.2.4\(b\)\]](#)
3. At the conclusion of the investigation, the complainant should receive a letter summarizing the complaint's adjudication (i.e. sustained, unfounded, employee exonerated). The Chief of Police has the discretion to include additional information that may be necessary for a complainant to understand the disposition of the complaint (**Form 7**). [\[52.2.4\(c\)\]](#)

H. ADJUDICATION & DISPOSITION [52.2.8]

1. Based upon the thorough review of all the evidence available at the time, the Chief of Police will adjudicate each complaint. As necessary, the Town Manager as the appointing authority will be consulted.
2. When corrective measures are required, the Chief of Police shall order an appropriate disposition. All dispositions are subject to the review and approval of the Town Manager.
3. A **Complaint Adjudication and Disposition** (Form 8) will be completed and signed by the Chief of Police at the conclusion of each investigation. The original form will be retained in the Department files and a copy will be given to the affected employee(s).

I. NOTICES AND INTERVIEWS

1. All interviews will be conducted:
 - a. While the officer is on duty, unless the seriousness of the investigation is such that an immediate interview is required;
 - b. At the police station, unless there are reasonable grounds to do the interview elsewhere;
 - c. By one interviewer, although other individuals may be present;
 - d. Without the use of offensive language, threats, promises or rewards as inducement to answer any question; and
 - e. When possible, with a tape recorder or stenographer present.
2. As soon as the investigation permits, employees who are the subject of an investigation will be informed of the complaint. When appropriate, the notice will be given in writing citing any responsibilities relative to the investigation.
3. **Weingarten Rights**
 - a. Any employee who is a member of a collective bargaining unit may request the presence of a local union representative during an interview when [s]he has reasonable cause to believe that the interview may result in disciplinary action.
 - b. This right is limited in the following manner:
 - i. The exercise of this right to union representation cannot unduly interfere with the legitimate needs of the Department;
 - ii. The employee may request a specific local union official (provided said official is not unavailable for an unreasonable period of time); and
 - iii. The local union official is limited to acting as an observer of the interview and may help clarify issues that may be confusing to the employee.

1. **Carney vs. City of Springfield, 403 MASS. 604 (1988)**

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- a. The Department may not compel an employee to provide potentially incriminating information unless [s]he is granted transactional immunity as required by Article 12 of the Massachusetts Declaration of Rights.
- b. Where no Article 12 violation occurs (that is, where the information to be provided is not potentially incriminating or where immunity has been granted), the Department may compel an employee to answer questions only if they are "narrowly drawn and specifically related to [his/her] job performance."
- c. Where no Article 12 violation occurs, and the Department compels an employee to answer questions, the Department must specify to the employee "the exact form of discipline" that will result from a refusal to respond.

2. **Notice of Complaint and Interview** (Form 9)

- a. Employees who are subject to an investigation will be given a **Notice of Complaint and Interview** form before being asked any questions about any allegations. This form shall include:
 - i. A written statement of the allegations; and [\[52.2.5\]](#)
 - ii. The employee's rights and responsibilities relative to the investigation. [\[52.2.5\]](#)
- b. In order to avoid any misunderstandings, the employee should read the form carefully and ask questions about any section that is unclear.
- c. The form shall be signed by the employee, investigating officer, and a second witness, if available.
- d. After signing the form, the employee should be interviewed and allowed to discuss the allegations that have been made. All questions must be directly, narrowly, and specifically related to the employee's official duties.

3. **Unless exigent circumstances exist:**

- a. No employee subject to an investigation, refusing to answer questions after invoking a constitutional privilege, will be ordered to answer questions. The interview shall be terminated immediately and the Chief of Police informed of the refusal.
- b. The Chief of Police (or a Captain acting in the Chief's absence) shall be consulted to discuss exigent circumstances or the need to compel statements.
- c. An employee will not be interviewed if:
 - i. The employee is a member of a collective bargaining unit; and
 - ii. The employee requests the presence of a local union official; and
 - iii. There is no local union official available.

4. **Notice of Complaint and Interview [with Immunity]** (Form 10)

- a. This form shall be used only at the direction of the Chief of Police in exceptional situations.

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- b. Employees who are subject to an investigation, and will be ordered to answer questions, will be given a **Notice of Complaint and Interview [With Immunity]** (Form 10) before being asked any questions.
- c. A letter of non-prosecution may be given if an employee has refused to answer questions after exercising his/her Miranda rights.
- d. In order to avoid any misunderstandings, the employee should read the form and the letter of non-prosecution carefully and ask questions about anything that is unclear.
- e. The exact form of discipline that will result from a continued refusal to answer questions will be provided.
- f. The form shall be signed by the employee, investigating officer, and a second witness, if available.
- g. After signing the form, the employee will be asked questions which are directly, narrowly, and specifically related to the performance of the employee's official duties.
- h. Any answers provided by the employee may be used in a disciplinary proceeding that might result in administrative action, including dismissal.