

Internal Investigations and Discipline

1010.1 PURPOSE AND SCOPE

Best Practice MODIFIED

This policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of members of the Tewksbury Police Department. This policy also addresses the authority and scope of discipline within the Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment, or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

Best Practice MODIFIED MPAC_A 2023 6th Ed - 51.1.1 (1), 52.1.1 (2)

The Tewksbury Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, commonwealth, and local law, municipal and county rules, and the requirements of any employment agreements. The scope of inquiry during an investigation into an officers misconduct is not limited to an Officer's conduct while on duty; it may extend to off duty conduct if such misconduct is reasonably and directly related to the members performance of duty or if such conduct affects the members fitness or ability to continue police service.

It is the policy of this department that all complaints made against the Department or its employees will be investigated. This Department will ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.3 COMPLAINTS

Best Practice MODIFIED MPAC_A 2023 6th Ed - 52.1.1 (2)

Complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy, or of federal, commonwealth, or local law, policy, or rule. Complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, commonwealth, or local law, policy, or rule may be handled informally by a supervisor and shall not be considered a complaint. Such inquiries generally include clarification regarding policy, procedures, or the response to specific incidents by the Department.

1010.3.1 COMPLAINT CLASSIFICATIONS

Best Practice MODIFIED MPAC_A 2023 6th Ed - 52.2.1 (1), 52.2.1 (2)

Complaints shall be classified in one of the following categories:

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Complaints of a Minor Nature - include but are not limited to rudeness, tardiness, or minor cases of insubordination. Upon receipt of a complaint that is minor in nature, the complaint shall be referred to the appropriate supervisor within two days. Whenever possible, complaints of a minor nature should be resolved quickly and effectively by the superior officer receiving them. All complaints of a minor nature shall be assigned a complaint number and be logged in the complaints binder. Complaints of a minor nature made against the department or an employee do not require immediate notification to the Chief of Police, however, the Chief shall be notified within two business days via email of all complaints made against an officer that are minor in nature. Complaints that are minor in nature that are resolved informally do not require submission to P.O.S.T. but shall be available to the commission upon request or under any policy the commission may establish.

Complaints Criminal in Nature or of Serious Nature - include but are not limited to corruption, brutality, use of excessive force, violation of civil rights, criminal misconduct, conduct unbecoming of an officer, neglect of duty, incompetence, and any other matter as directed by the Chief. These complaints shall be investigated by the Criminal Investigations Division Commander who shall report directly to the Chief of Police. All complaints of a criminal or serious nature shall be assigned an Internal Affairs Investigation number. If there are any questions regarding whether or not a complaint meets this criteria they shall be directed to the Deputy Chief. Complaints criminal or serious in nature made against the department or an employee require immediate notification to the Chief of Police either in person, if the Chief is at the station, or via telephone. Complaints criminal or serious in nature shall be submitted to P.O.S.T. within two business days.

Pattern of Complaints - If an agency identifies a pattern of complaints against an officer, regardless if the complaints are related to minor or non-minor matters, the head of the agency shall forward any pattern of complaints alleging the misconduct of the officer to the P.O.S.T. commission.

It should be noted that, although not triggered by a complaint as noted above, an internal review is a department-initiated course of action that can be taken to ensure that the actions taken by officers are justified, lawful, proper and consistent with department policy and procedure. Examples of situations that may require an internal review include, but are not limited to, pursuits and use of force incidents. An Internal Review number shall be assigned to each Internal Review. Refer to section 1010.18 of this policy for additional information regarding internal reviews.

1010.3.2 SOURCES OF COMPLAINTS

Best Practice **MODIFIED** MPAC_A 2023 6th Ed - 52.1.1 (3)

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person, or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.

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- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints shall be accepted and investigated to the extent that sufficient information is provided. Anonymous complaints that do not provide an adequate basis for investigation need not be forwarded to the P.O.S.T. commission.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

Best Practice

1010.4.1 COMPLAINT FORMS

Best Practice

MODIFIED

MPAC_A 2023 6th Ed - 52.1.4*

TriPLICATE complaint forms will be maintained in the Office of the Officer-in-Charge and will be readily available to any member of the public requesting the form. Complaint forms may also be accessible through the department website and may be available at other Town facilities.

Complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1010.4.2 ACCEPTANCE

Best Practice

MODIFIED

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. A department member receiving a complaint shall make every effort to immediately locate a supervisor and notify them that an individual seeks to file a complaint however, if a supervisor is not immediately available to take a complaint, no individual should be denied an opportunity to file a complaint, nor should such individual be directed to return or call back later. The receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate. The Officer-in-Charge of the police station at the time that a complaint is received is responsible for the efficient receiving and complete recording of any complaint made by an individual. The Officer-in-Charge shall notify the Chief and Deputy Chief in person or via telephone as soon as possible in the case of any serious allegation made against an employee or the department.

Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs, or physical evidence may be obtained as necessary. When a telephone call is received from an individual who desires to make a complaint against a department member, the call should be immediately transferred to the Officer-in-Charge. Individuals making complaints by telephone should be informed that their signed complaint is

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preferred. However, no telephone complaint should be refused or rejected solely because the complainant does not wish to sign a complaint form or does not wish to be identified. Any allegations of police misconduct received by telephone will be recorded on the Complaint Report Form by the Officer-in-Charge for further investigations.

If a complaint is received by mail, the Officer-in-Charge shall complete the complaint form, attach the original communication received via mail and ensure that the complaint is processed according to this policy.

If the information received from any complaint source is insufficient or incomplete, the complainant is to be contacted, informed of the departmental complaint procedure, and the necessary additional information should be obtained so that the complaint can be properly investigated.

In order to obtain complete and accurate information regarding a complainant and the allegations made, it is essential that the police personnel allegedly involved be identified whenever possible.

If the target of the complaint is either the Chief of Police or a family member of the Chief, the Officer-in-Charge shall be responsible for the efficient receiving and recording of the complaint as well as immediately notifying the Town Manager of the complaint. If an officer would like to make a complaint against the Chief of Police or a family member of the Chief, they may also report it directly to the Town Manager.

1010.4.3 OTHER SOURCES OF COMPLAINTS

Agency Content

Complaints by Prisoners: All prisoners who allege misconduct or mistreatment by a department member should be advised by the supervisor on duty of his or her right to submit a Complaint Form in the usual manner and such complaint will be processed in the same way as other individual complaints.

Complaints from other Governmental Agencies: When information is received or obtained from other governmental agencies alleging acts of misconduct against a department member, this information will be recorded on a Complaint Form and processed in the usual manner.

Complaints received while on Patrol: If an officer on patrol is approached by an individual regarding a complaint of alleged misconduct against a member of the police department, the officer shall contact a supervisor immediately. Additionally, the officer should describe the departmental complaint procedure and inform such person that his or her complaint should be directed to the Officer-in-Charge of the police station.

Complaints Received through the Office of the Chief of Police: The Chief's administrative assistant may accept mailed written, formal complaints. When an individual files a complaint by mail, the secretary will complete a Complaint Form and attach the individual's letter. The Chief's secretary will acknowledge receipt of the letter and prepare an acknowledgment of the complaint for the Chief's signature, indicating to the individual that he or she will hear from the Department within 30 days. The Chief's secretary will complete the necessary entry in the Complaint Log for

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each individual Complaint Form received, assign a number, copy the form, file the original, and forward a copy to the Chief for review.

1010.5 DOCUMENTATION

Best Practice **MODIFIED** MPAC_A 2023 6th Ed - 52.1.2 (1)

Supervisors shall ensure that all complaints are documented on a complaint form. Individuals making complains in person should be requested to complete the appropriate complaint form, read it over, make any necessary corrections or additions and to sign the completed form. If a complainant refuses to sign the complaint form, the supervisor shall make a notation to that effect on the form and any unsigned complaint will be processed in the same manner as a signed complaint. If the individual making the complaint does not want to complete the complaint form, the supervisor shall orally take the complaint and complete the complaint form and the complaint will be processed in the same manner. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

If an individual registers a complaint of alleged excessive force, the Officer-in-Charge should carefully note the physical condition of the complainant, record any unusual marks or visible injuries, and, if possible, obtain an immediate color photograph of such injuries.

If the Officer-in-Charge responsible for receiving an individuals complaint believes or suspects that the complainant is under the influence of drugs or intoxicants, or is mentally ill or unbalanced, or displays any trait or condition which has a bearing on his/her credibility, he or she will note and record this information and attach it to the Complaint Report Form.

The supervisor will provide a copy of the written complaint form to the complainant upon completion.

A copy of the complaint will be given to the officer(s) implicated unless the Chief has determined, in his sole discretion, that providing a copy of the complaint to the officer implicated therein will jeopardize or compromise the investigation of that complaint.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

1010.5.1 COMPLAINTS ALLEGING OFFICER MISCONDUCT

State **MODIFIED** MPAC_A 2023 6th Ed - 52.1.2 (7), 52.2.9 (1), 52.2.9 (2A), 52.2.9 (2B), 52.2.9 (2C), 52.2.9 (2D), 52.2.9 (2E), 26.1.8 (3A)*, 26.1.8 (3B)*

Internal investigations of complaints alleging officer misconduct should comply with the requirements of 555 CMR § 1.01, including initiation of the investigation within 14 days unless an extension is allowed by MPOSTC, completion within 90 days unless an extension is allowed by MPOSTC, the assignment of impartial investigators, and the preservation of evidence (555 CMR § 1.01).

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The Chief of Police or the authorized designee should transmit any covered complaint received by the Department and provide the required information within two business days of receipt to MPOSTC in the form prescribed by MPOSTC (G.L. c. 6E, § 8; 555 CMR § 1.01). The Chief of Police or the authorized designee should also provide the information required by MPOSTC upon the conclusion of any internal investigation, the investigation report signed by the investigator, the final disposition, and any resignation of an officer during investigation in the form prescribed by MPOSTC (G.L. c. 6E, § 8; 555 CMR § 1.01).

The Department should cooperate with any audit conducted by MPOSTC related to complaints of officer misconduct or unprofessionalism and provide access to all records as allowed by law (G.L. c. 6E, § 8).

1010.6 ADMINISTRATIVE INVESTIGATIONS

Best Practice **MPAC_A 2023 6th Ed - 52.1.3 (2), 52.1.3 (3)**

Allegations of misconduct will be administratively investigated as follows.

1010.6.1 SUPERVISOR RESPONSIBILITIES

Best Practice **MODIFIED** **MPAC_A 2023 6th Ed - 52.1.3 (1), 52.2.2 (1), 52.2.2 (2), 52.2.2 (3), 52.2.2 (4), 52.2.2 (5), 52.2.1 (1), 52.2.1 (2), 52.2.2 (4A), 52.2.5 (3B)**

The first line supervisor bears the primary responsibility for the conduct, discipline, and duty performance of all personnel under his or her supervision and the basic accountability for failure to take warranted disciplinary action. The first line supervisor's familiarity with his/her personnel allows him/her the best opportunity to observe or foresee disciplinary problems and to determine the most appropriate methods to deal with them. Supervisors and Commanding Officers shall be responsible for discovering marginal or problem employees and for uncovering any evidence of corruption, dishonesty, or malfeasance by personnel under their command.

In general, the primary responsibility for the investigation of a complaint that is minor in nature shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 1. The original complaint form will be directed to the Deputy Chief, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.

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2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the Deputy Chief or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
 - (c) Resolving those complaints of a minor nature that can be resolved immediately.
 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Deputy Chief.
 3. The complainant shall be notified of the final resolution to the complaint.
 4. Notifying the Chief of Police via email within two business days of any complaint made against an officer that is minor in nature.
 - (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Deputy Chief and Chief of Police are notified in person, if they're at the police station, or via cell phone as soon as practicable.
 - (e) Promptly contacting the Deputy Chief and the Chief of Police for direction regarding the supervisor's role in addressing a complaint that relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination.
 - (f) Forwarding unresolved complaints of a minor nature to the Deputy Chief, who will determine whether to contact the complainant or assign the complaint for investigation.
 - (g) Informing the complainant of the assigned investigator's name and the complaint number within three days after assignment.
 - (h) Investigating a complaint as follows:
 1. Making reasonable efforts to obtain names, addresses, and telephone numbers of witnesses.
 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
 - (i) Ensuring that the procedural rights of the accused member are followed.
 - (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.
 - (k) If during the process of a complaint investigation the complainant indicates a desire to withdraw the complaint, every effort should be made to ensure that this decision is voluntarily made and a signed statement to that effect should be obtained from the complainant.

1010.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Best Practice **MODIFIED** MPAC_A 2023 6th Ed - 52.2.1 (2), 52.2.6 (1E), 52.2.6 (1A), 52.2.6 (1B), 52.2.6 (1C), 52.2.6 (1D), 52.2.6 (1F)

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Whether conducted by a supervisor or an employee of the Criminal Investigation Division, the following applies to employees:

- (a) When employees are notified that they have become the subject of an Internal Affairs investigation, the department will issue the employee a written statement of the allegations and the employee's right and responsibilities relative to the investigation.
- (b) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (c) Unless waived by the employee, interviews of an accused employee shall be at the Tewksbury Police Department or other reasonable and appropriate place.
- (d) No more than two interviewers should ask questions of an accused employee.
- (e) Prior to any interview, an employee should be informed of the nature of the investigation and members shall be provided with a copy of their Bill of Rights.
- (f) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (g) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.
- (h) If, as a result of a preliminary investigation and/or the nature of the allegations, it is anticipated that a member's statements could be used against him in a criminal action, the member shall be given a copy of his Miranda Warnings. The member shall be afforded all constitutional rights regarding such matter. If it is not anticipated that criminal action will result against a member, he will be advised of this before questioning begins. If at any time during questioning it becomes apparent that although criminal action was not anticipated prior to questioning, because of responses received during such questioning, criminal action may now result, questioning must be immediately stopped. Before further questioning resumes, the member must now be advised of his rights mentioned above. The use of any compelled statement which leads to evidence of criminal wrongdoing shall be subject to the limitations imposed by the United States Constitution and all applicable federal and state case law and administrative decisions.
- (i) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so. The officer must be informed of the precise repercussions of their refusal to answer questions.
 - 1. If the employee invokes his/her right against self-incrimination under Article 12 of the Massachusetts Constitution, and refuses to provide a written waiver, he/she may be ordered to answer questions only after being granted transactional immunity for any criminal conduct revealed by the employee during the interview or report. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include

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- conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (j) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed and the employee requests a copy of the interview, it should be provided to the employee prior to any subsequent interview. Before this questioning begins, and in the presence of the accused officer, the following information should be entered into the record:
- (a) Name and rank of superior officer conducting the interview;
 - (b) Identity of all persons present;
 - (c) Nature of the accusation;
 - (d) Whether the accused officer is the subject of the investigation or a witness: and
 - (e) Name of complainant unless extenuating circumstances exist which would allow withholding.
- (k) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed. The status of the union representative during the period of questioning shall be limited to that of an observer and advisor to the employee. The Chief of Police or his designee shall be entitled to insist prior to and during the period of questioning, upon hearing only the questioned member's account of the matter under investigation.
- (l) All employees shall provide complete and truthful responses to questions posed during interviews.
- (m) No employee may be compelled to submit to a deception detection device examination in an administrative investigation, nor shall any refusal to submit to such examination be mentioned in any investigation (G.L. c. 149, § 19B). This shall not apply to lie detector tests administered by law enforcement agencies as may be otherwise permitted in criminal investigations.
- (n) Once an officer has been notified by the Department or by another Officer that a complaint is going to be or has been filed against them, the officer is restricted from contacting the complainant or directing any other individual to contact, influence, or pressure the complainant or any witnesses associated with the circumstances of the investigation.
- (o) In conducting an internal administrative investigation with the possibility of taking departmental disciplinary action, there is no legal obligation for the police department to provide department members with an opportunity to consult with an attorney before being questioned on work related matters, or to permit a union representative to be present during such questioning. Such requests, however, may be granted if

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the investigation is not thereby unduly delayed or unless it would interfere with the confidentiality of the investigation. The attorney or the union representative should not participate in the questioning, except to counsel or advise the officer.

- (p) Upon orders of the Chief of Police or his designee, a member may be required to submit to a medical or laboratory examination, at the department's expense. This examination must be specifically directed and narrowly related to a particular Internal Affairs investigation being conducted by the department. Further, a member may also be required to be photographed, to participate in a lineup, submit to audio or video recordings, and/or submit a financial disclosure statement when the actions are material to a particular internal affairs investigation. Such submissions shall only be conducted in a manner which is consistent with applicable federal and state case law, statutes, and administrative decisions.

1010.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Best Practice MODIFIED MPAC_A 2023 6th Ed - 52.2.8 (1)

Formal investigations of complaints shall be thorough, complete, and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1010.6.4 CONCLUSION OF FACT AND DISPOSITIONS

Best Practice MODIFIED MPAC_A 2023 6th Ed - 52.2.8 (1)

For each investigation into alleged misconduct, the investigating supervisor shall make a determination on the conclusion of fact. The conclusion of fact shall be a written statement by the investigating officer based on his/her analysis of the evidence.

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

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Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful, and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If, after investigation, a determination is made that a complaint is unjust, frivolous, or capricious in nature, this shall be noted in the record, in addition to a finding as specified above.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1010.6.5 COMPLETION OF INVESTIGATIONS

State **MODIFIED** MPAC_A 2023 6th Ed - 52.2.3 (1)

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (G.L. c. 6E, § 10). The P.O.S.T. Commission may, upon a showing of good cause, extend the time to complete the investigation. Such requests for extensions shall be requested by the investigating officer and authorized/approved by the P.O.S.T. Commission.

1010.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

Best Practice

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

1010.7 ADMINISTRATIVE SEARCHES

Best Practice **MODIFIED**

Assigned lockers, storage spaces, and other areas, including desks, offices, and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct. Such department property is furnished to officers as a matter of convenience. It is clearly understood that there is no expectation of privacy in such locations and the department and Chief maintain their right to search without a warrant.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio, or other document or equipment.

1010.8 RELIEF FROM DUTY

Agency Content

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Supervisors may relieve any employee from duty, for any infraction or violation of the policies, rules, or procedures of the department which would be conducive to holding the department up to ridicule or jeopardize the mission of the department to effectively provide police services, specifically, but not limited to:

- (a) Reporting for duty in an unfit condition.
- (b) Leaving assigned work location or refusing to work.
- (c) Insubordination.
- (d) Improper use of department vehicles.
- (e) Falsifying any statement or record.
- (f) Abusing, destroying, damaging, stealing, or defacing property, tools, or equipment of the department or that of other.

If any member is relieved from duty by a Supervisor, the Supervisor who relieved the member will submit written documentation to the Chief of Police as soon as possible but not later than the end of the tour of duty in which such action was taken. Such documentation will contain a report of the action taken and the reason why such action was necessary.

1010.9 ADMINISTRATIVE LEAVE

Best Practice MODIFIED MPAC_A 2023 6th Ed - 52.2.7 (1A), 52.2.7 (1B), 52.2.7 (2)

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons, and any other department equipment. The employee's building and email access may also be relinquished.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.
- (d) Is prohibited from acting in the capacity of an officer.

1010.10 CRIMINAL INVESTIGATION

Best Practice MODIFIED MPAC_A 2023 6th Ed - 52.2.2 (3), 52.2.2 (4), 52.2.2 (2)

Where a member is accused of potential criminal conduct, a separate supervisor or investigator may be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

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The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct whether on or off duty. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

When appropriate, the Department will maintain a liaison with the prosecutorial staff of any competent jurisdiction, for advice and guidance, in the investigation of any member's alleged criminal misconduct.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Tewksbury Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1010.11 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Best Practice **MODIFIED** MPAC_A 2023 6th Ed - 26.1.4 (2E), 26.1.4 (2F), 26.1.5 (2), 26.1.4 (1)

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police.

1010.11.1 DEPUTY CHIEF RESPONSIBILITIES

Best Practice **MODIFIED** MPAC_A 2023 6th Ed - 26.1.4 (2E), 26.1.4 (2F), 26.1.5 (2), 26.1.4 (1)

Upon receipt of any completed personnel investigation, the Deputy Chief shall review the entire investigative file, the member's personnel file, and any other relevant materials.

When requested by the Chief of Police, the Deputy Chief may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Deputy Chief may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Deputy Chief shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1010.11.2 CHIEF OF POLICE RESPONSIBILITIES

Best Practice **MODIFIED** MPAC_A 2023 6th Ed - 26.1.4 (2E), 26.1.4 (2F), 26.1.5 (2), 26.1.7 (3B), 26.1.7 (3C), 26.1.7 (3D), 26.1.7 (1), 26.1.7 (2), 26.1.7 (3A), 26.1.4 (1)

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Deputy Chief for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall make a decision on the complaint based on one of the following classifications:

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sustained, exonerated, not sustained, or unfounded. The Chief of Police, after consultation with the Town Manager, will also make a determine regarding the amount of discipline, if any, that should be imposed. For more serious offenses, the Chief of Police should forward the report of investigation to the Town Manager for consideration and appropriate administrative action.

The member will be notified, in writing, of the disposition as well as the recommended discipline. In the event disciplinary action is proposed, the Chief of Police shall provide the member with the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or, if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective. If the discipline imposed is termination, the member should also be provided with a statement of the status of fringe and retirement benefits after dismissal.

1010.11.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

Best Practice

The Chief of Police or the authorized designee should ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint.

1010.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

Best Practice **MODIFIED**

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file and notification shall be made to MPOSTC. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1010.13 DISCIPLINARY ACTIONS

Agency Content

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All superior officers have a duty to ensure that discipline is maintained within the department in a fair and impartial manner for infractions of department rules, regulations, policies and procedures. These include verbal warnings and written warnings.

The following methods may be employed in addition to or as alternatives:

- (a) **Training:** In some cases, a member's disciplinary or productivity deficiencies may be addressed by additional training in the problem area. Successful completion of the course of training and application on the job will determine the effectiveness of this method. At the discretion of the Chief of Police, an employee may be required to attend such training.
- (b) **Counseling:** At those times that a supervisor recognizes a minor problem or the potential for one with a member, the supervisor may choose to discuss the matter with the employee and attempt to remedy the situation before more stringent disciplinary methods are required. The supervisor will notify, in writing, the next highest level of authority of the reasons necessitating such action. A copy of such notice will be given to the employee.
- (c) **Corrective Action:** All Supervisors shall have the authority to impose corrective action on an employee under their respective supervision for substandard performance or a minor rules violation in accordance with the provisions and requirements of this policy. The Division Commander shall be notified of the corrective action taken by the Supervisor before it is imposed. Corrective action shall include but not limited to: assignment with a partner, change in assignment, review of specific policies or procedures, assigned reading assignments, additional training/schooling, direct supervision, increased workload, negative feedback, extra work assignments, etc.
- (d) **Verbal Warning:** All supervisors shall have the authority to document and issue verbal warnings to employees for minor rule infractions and poor performance levels. Verbal warnings shall be documented in Guardian. Verbal warnings shall be the start of the documentation process and may be used in combination with corrective action or as part of the progressive discipline process.
- (e) **Written Warning:** All supervisors shall have the authority to document and issue written warnings. Supervisors holding the rank of Sergeant shall consult with their Division Commander before issuing a written warning to an employee under his or her direction. Written warnings shall be documented in Guardian.

Any training or counseling shall be documented by the supervisor and entered into their personnel file.

The following is an outline by rank and command level of authority of superior officers to discipline their subordinates:

- (a) **Sergeant:** has the authority to counsel, evaluate, praise, and recommend for recognition. He/she also has the authority to take corrective action, issue verbal warnings, and relieve from duty. A Sergeant may issue a written warning after consultation with their Division Commander, and may recommend more serious punitive disciplinary action, as appropriate.
- (b) **Lieutenant:** All the above plus the authority to issue written warnings..

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- (c) **Deputy Chief:** All the above, plus the authority to suspend for a period not to exceed five days (with approval of Chief).
- (d) **Chief of Police:** All the above, plus the authority in accordance with all applicable law and Department of Personnel Administration Rules, to recommend for promotion, impose punishment duty, decrease annual leave, suspend for no more than five days, and recommend for termination to the Town Manager.
- (e) **Town Manager:** All the above, plus the authority to suspend for more than five days, lowering in rank or compensation, and termination.

Any superior officer who is directed to act in the capacity of a rank above his ordinary or usual rank shall, for that necessary time, possess the authority of that rank.

Documentation is required to ensure the fair and consistent enforcement of the rules. All supervisors are required to document the measures they take to enforce the rules or correct sub standard employee behavior or conduct. Minor infractions of the rules shall be documented in writing even though they only require a verbal warning. The documentation of a verbal warning reduced to written form is essential to ensure accountability in the organization and to protect employees against the inconsistent enforcement of the rules. Therefore, whenever feasible the following procedure shall be followed by all members of the supervisory staff before issuing a verbal or written warning to an employee.

1. Supervisors should review the employee's personnel file to determine if the employee has any other documented verbal or written warnings for similar offenses.
2. No changes will be allowed to existing documentation in an employee's personnel file. Only members of the staff with the grade of Sergeant or higher shall have access to personnel files.
3. Once the supervisor has checked the employee's file for previous documented infractions, the supervisor shall proceed with progressive discipline, as appropriate.

1010.14 TERMINATION OF PERMANENT EMPLOYEE

Agency Content

If an employee, other than a probationary officer, is dismissed as a result of an internal investigation or a disciplinary action, the employee shall receive the following information in writing:

- (a) A written statement citing the reason for the dismissal;
- (b) The effective date of the dismissal;
- (c) A statement of the status of fringe and retirement benefits after dismissal.

1010.15 POST-DISCIPLINE APPEAL RIGHTS

State **MODIFIED** MPAC A 2023 6th Ed - 26.1.6 (1A), 26.1.6 (1B)

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right

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to appeal to the Town Manager using the procedures established by any employment agreement and/or personnel rules.

In the event of disciplinary action against an employee, the appeal process shall be in compliance with either the Collective Bargaining Agreement or G.L. c. 31, but not both.

1010.16 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

Best Practice **MODIFIED**

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Town Manager or the authorized designee.

In cases where an individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate, the probationary period may be extended at the discretion of the Chief of Police.

1010.17 RETENTION OF PERSONNEL INVESTIGATION FILES

State **MODIFIED** MPAC_A 2023 6th Ed - 52.1.2 (1), 52.1.2 (3)

The records of all complaints made against the department and individual employees shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

In order to ensure that the individual rights of officers who are the subject of an Internal Affairs investigation are protected, all materials relevant to that investigation shall be kept strictly confidential and under the direct control of the Supervisor conducting the investigation.

No statement regarding an Internal Affairs investigation will be made or issued to the public or media unless the charges have been sustained and action has been taken or initiated against the officer or employee.

A complete file of records on the investigation of all citizen complaints and disciplinary records shall be kept secured in the Office of the Chief of Police. These files shall contain supporting investigative information, as well as notes taken during the investigation. These files shall be treated as confidential investigative files.

1010.18 OFFICER INFORMED OF P.O.S.T. NOTIFICATION BY AGENCY

Agency Content

When the Tewksbury Police Department supplies information concerning an officer to the P.O.S.T. Commission, the department must:

- (a) Notify the officer that it has done so in accordance with any other provision of 555 CMR that requires notification; or

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- (b) In the absence of any such provision, must notify the officer that it has done so within ten calendar days, unless such notification would compromise an ongoing investigation or the security of any person or entity, or would be precluded by federal or Massachusetts law.

A departments notification to an officer regarding the submission of a complaint to the Commission should ordinarily include the complaint or describe its substance.

1010.19 INTERNAL REVIEW BOARD

Agency Content

An internal review board may be requested for any incident by the Chief of Police to ensure that the actions taken by officers are justified, lawful, proper and consistent with department policy and procedure.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or the evaluation of the use of force.

1010.19.1 INTERNAL REVIEW BOARD TRACKING AND DISPOSITIONS

Agency Content

An Internal Review number shall be assigned to each Internal Review. The review will determine which of the below-listed categories the officers' action fall into:

- (a) **Proper Conduct:** The actions of the officer were justified, lawful, proper, and consistent with department policy and procedure.
- (b) **Improper Conduct:** The actions of the officer were inconsistent with department policy and procedure.
- (c) **Inadequate Policy:** The actions of the officer were not inconsistent with department policy or procedure, however the review determined the policy or procedure is inadequate. The department will review the policy/procedure to determine what changes need to be made so as to present clearer guidelines to department personnel and prevent a reoccurrence of the type of action complained about.

All Use of Force Review Boards shall be considered Internal Reviews and assigned an Internal Review number (see Refer to Use of Force Review Board Policy for additional information).

1010.19.2 COMPOSITION OF THE BOARD

Agency Content

The Deputy Chief of Police shall staff the Use of Force Review Board with at least four individuals, including the Deputy Chief, from the following, as appropriate:

- (a) Command staff representative from the involved member's chain of command
- (b) Professional Standards Manager
- (c) Administration Division Commander
- (d) Department instructor for the type of weapon, device, or technique used

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The Deputy Chief of Police will serve as chairperson.

Attachments

Complaint Report Form revised 2019pdf.pdf

Tewksbury Police Department

Citizen and Officer Complaint Form

Complaint Form # _____

Name of Aggrieved Person	Address	Phone #
Business	Address	Phone #
Date of Birth	Social Security #	

.....
PERSONNEL COMPLAINED ABOUT

Name	Rank	Badge #
Description		

Nature of Complaint: (Describe in your own words everything you consider necessary for police to investigate your complaint. Use second sheet if necessary.)

.....
WITNESS

Name	Address	Phone #
Name	Address	Phone #

I understand that I will be informed of the result of the police investigation and the deposition of my complaint. I am/am not willing to testify at any hearing in connection with this complaint. I have read the above statement of complaint and it is true and accurate to the best of my knowledge.

Signature _____ Witness _____
Aggrieved Party

Satisfactory Resolution of Complaint : _____
Aggrieved Party Witness

Department Copy
NOTICE : THIS FORM SIGNED UNDER THE PAIN AND PENALTIES OF PERJURY.