



TIVERTON POLICE DEPARTMENT GENERAL ORDERS

Subject: Employee Misconduct		General Order Number: 230.10
Section: 200- Administration		Subsection: 30- Internal Operations
Amends/Supersedes: 1-4, 230.10 (11/05/2014), 230.10 (05/18/2020)		
Effective Date: 11/05/2014	Revised Date: 11/16/2020	Review Date: As Needed
Per Order Of: Patrick W. Jones, Chief of Police		
RIPAC: 5.5, 5.6, 5.7, 5.8, 5.9		
Distribution: All Department Members		

NOTE: This written directive is for the internal governance of the Tiverton Police Department, and is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

I. PURPOSE

The purpose of this policy is to provide all Tiverton Police Department employees, and the public, the procedures for processing and investigating allegations of officer/employee misconduct or citizen complaints. Tiverton Police Department officers and employees are expected to maintain the highest standards of conduct. Officers and employees shall conduct themselves properly and professionally, on or off duty. The purpose of this policy is to establish responsibilities and procedures for conducting investigations of misconduct and serious misconduct (administrative and/or criminal) that may result in disciplinary action and/or criminal prosecution.

II. POLICY

The Tiverton Police Department's public image is determined by a professional response to allegations of misconduct against its officers and employees. The establishment of procedures for the investigation of complaints is crucial to demonstrate and protect the department's integrity. This department shall accept and fairly and impartially investigate all complaints or allegations of misconduct to determine their validity, and to timely impose any disciplinary or non-disciplinary corrective actions that may be warranted. It is the Tiverton Police Department's policy to investigate every instance of alleged misconduct against a member of this department, whether criminal or administrative in nature, in accordance with federal or state laws, and Tiverton Police Department policies and procedures. The Deputy Chief of Police shall be responsible for the investigation of all allegations of serious misconduct and serious use of force incidents pursuant to Tiverton Police Department policies and procedures. The Chief of Police will have the authority to utilize resources outside the department to conduct investigations including retaining outside investigators.

III. DEFINITIONS

Complaint: Any allegation by an individual regarding Tiverton Police Department services, policies, practices or procedures, claims for damages, which allege employee misconduct, or employee misconduct; and any allegation of possible misconduct made by a Tiverton Police Department employee.

Complainant: Any person who files a complaint regarding the conduct of any employee, or the Tiverton Police Department's policies, procedures, or actions.

Complaint Control Number: A sequential number used to identify and track citizen complaint investigations.

Category 1 Complaints: Serious allegations, including alleged criminal conduct that has the potential to damage the reputation of the department or its personnel.

Category 2 Complaints: Less serious allegations that warrant an investigation, but do not rise to the level of a more serious complaint.

Category 3 Complaints: Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.

Category 4 Complaints: Minor Service complaints by a citizen who contacts the department questioning, or informally complaining, about a policy, procedure, or tactic used by the department or an employee.

Critical Firearm Discharge: A discharge of a firearm by a Tiverton Police Department officer, but does not include range and training discharges and discharges at animals.

Counseling: Information relayed to an employee by a ranking officer or training officer, in which the information relayed points out strengths, weaknesses, or training needs, or offers the employee the opportunity to improve performance. Counseling is not disciplinary by itself, but may progressively lead to discipline.

Discipline: A method of training or developing an employee by proper supervision, counseling, instruction, recognition or sanctions. Discipline may be positive (awards) or punitive (sanctions or dismissal).

Employee: Any person employed by the Tiverton Police Department, whether sworn or non-sworn, part-time or full-time.

External Complaint: A complaint that originates from outside the department.

Internal Complaint: A complaint that originates from within the Tiverton Police Department. Such complaints may be initiated by other Tiverton Police Department employees or from supervisors who observed, or were informed by other employees, of possible policy violations.

Internal Affairs: The Deputy Chief of Police is responsible for the department's Internal Affairs function. The Deputy Chief of Police is designated with the primary responsibility for coordinating all Administrative and Criminal investigations of Tiverton Police Department Employees and Citizen Complaints of Misconduct. The Deputy Chief of Police reports directly to the Chief of Police on all Internal Affairs matters.

Misconduct: Any conduct by a Tiverton Police Department employee that violates Tiverton Police Department policy or the law.

Officers: Any sworn law enforcement officer employed by or assigned to the Tiverton Police Department, whether on or off duty, including supervisors and members authorized to carry department issued weapons, and members of the Reserve Officer Corps.

Preponderance of the Evidence Standard: The quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula. A preponderance of evidence has been described as just enough evidence, no matter how slight, to make it more likely than not that the allegation sought to be proved is true or false.

Serious Misconduct: Suspected criminal misconduct and the specific forms of misconduct identified below in Section IV.D. Such conduct shall be investigated by the Deputy Chief of Police. The Chief of Police will have the authority to utilize resources outside the department to conduct investigations of serious misconduct including retaining outside investigators.

Use of Force Resulting in Serious Bodily Injury: Any action by an officer that results in physical injury that (1) creates a substantial risk of death; (2) causes protracted loss or impairment of the function of any bodily part, member, or organ; or (3) causes serious permanent disfigurement..

Summary Action: Disciplinary action (oral reprimand or counseling documented in writing) taken by an employee's supervisor or commander for minor violations of department rules, policies, or procedures as defined by this department. Summary actions are the lowest level of disciplinary action generally handled by first line supervisors.

Supervisor: Includes those holding the rank of Sergeant or above, or anyone acting in those capacities, or any other individual authorized by the Chief of Police.

Use of Force Incidents Indicating Potential Criminal Liability: Includes, but is not limited to, use of any less than lethal weapon, all strikes, blow, kicks, or other similar uses of force against a handcuffed subject, and all accusations or complaints of excessive use of force.

IV. PROCEDURES

A. Investigations of Citizens Complaints

1. General

- a. All investigations shall, to the extent reasonably possible, determine whether an employee's conduct was justified. No investigation shall be closed simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury;
- b. All investigations shall be conducted by the Deputy Chief of Police or a supervisor who did not authorize, witness, or participate in the incident, and all investigations shall contain:
 - (1) Documentation of the name and badge/ ID number of all employees involved in, or on the scene during, the incident, and a canvass of the scene to identify civilian witnesses;
 - (2) Thorough and complete interviews of all witnesses, subject to the Tiverton Police Department's Garrity Protocol, and an effort to resolve material inconsistencies between witness statements;
 - (3) Photographs of the subject(s) and employee(s) injuries or alleged injuries; and
 - (4) Documentation of any medical care provided.

B. Role of the of the Deputy Chief of Police

1. The Deputy Chief of Police is responsible for the department's Internal Affairs function. The Deputy Chief of Police is designated with the primary responsibility for coordinating all Administrative and Criminal investigations of Tiverton Police Department Employees and Citizen Complaints of Misconduct. The Deputy Chief of Police reports directly to the Chief of Police on all Internal Affairs matters.
2. Upon receipt of a complaint, the complaint will be reviewed by the Deputy Chief of Police and classified in its proper category for assignment. Categories are identified in section C below.
3. The Deputy Chief of Police shall evaluate complaints of criminal conduct made against Tiverton Police Department employees, and report findings to the Chief or Police. The Chief of Police may authorize transfer of the criminal allegation investigation to an outside law enforcement agency. The Town Solicitor or the Rhode Island Attorney General's Office shall also be advised of the complaint. A parallel Internal Affairs Investigation will be conducted to ensure no administrative or departmental violations have occurred, but may be delayed until the resolution of the criminal investigation.
4. Upon completion of the Internal Affairs Investigation Report, the Deputy Chief of Police shall forward the report and all supporting documents to the Chief of Police, for review. The Chief of Police may accept the report as completed or return the report for further investigation.
5. The Deputy Chief of Police shall have the following additional responsibilities:
 - a. Maintain a log of complaint control numbers;
 - b. Conduct a regular audit of complaints to ascertain the need for changes in training or policy;
 - c. Maintain statistical and related information to identify trends involving all complaints of use of force, officer misconduct, and/or abuse of authority;
 - d. Track complaints against individual employees to assist in employee risk analysis and the Early Warning/Early Intervention System (EWIS) (Refer to General Order 520.20 Early Warning/Early Intervention System (EWIS)); and
 - e. Provide the Chief of Police and/or supervisors with bi annual summaries of complaints and final dispositions against officers.
6. In the absence of the Deputy Chief of Police, or if the position of the Deputy Chief of Police is not filled, the Chief of Police may assign the above responsibilities to a senior ranking officer (Lieutenant or above).

C. Complaint Categories

The following chart depicts the types of complaints, which are defined by the seriousness of the allegation, along with whom the complaint is generally investigated and reviewed by:

TYPES	DESCRIPTION	EXAMPLES	HANDLED BY
Category 1	Allegations that have the potential to damage the reputation of the Department or its personnel, and generally include, but are not limited to, allegations of serious misconduct, serious violations of Standards of Conduct and other written directives, or criminal conduct.	<ul style="list-style-type: none"> • Excessive and/or improper use of force • Brutality • False arrest • Unlawful search and/or seizure • Corruption • Dishonesty and untruthfulness • Gross Insubordination • Violation of civil rights • Bias-based profiling • Sexual harassment • Workplace violence • Violation of criminal statutes 	<p>Deputy Chief of Police (Formal and documented with written statements and audio/video recorded interviews)</p> <p>OR;</p> <p>Outside Agency</p>
Category 2	Allegations that generally include, but are not limited to, allegations of a non serious nature and violations of Standards of Conduct and other written directives of a non-serious nature.	<ul style="list-style-type: none"> • Violations of policies, procedures or rules, other than those which constitute a Category 1 allegation. • Inappropriate conduct and/or behavior of a less serious nature, such as rudeness, discourtesy, and offensive language. • Violation of personnel rules 	<p>Deputy Chief of Police (Formal and documented with written statements)</p>
Category 3	Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.	When a citizen complains about the behavior of an employee, such as rudeness or demeanor, but does not wish to file an official formal complaint.	<p>Supervisor (Sergeant or Lieutenant) (Informal and Documented as Informational Purposes Only)</p>
Category 4	Minor complaints by a citizen who contacts the Department questioning or informally complaining	When a citizen questions or complains about the <i>procedures or tactics</i> used by the department or employee, such	<p>Supervisor (Sergeant or Lieutenant) (Informal and Documented as Informational</p>

	about a policy, procedure, or tactic used by the Department or an employee.	as on-scene command presence, or why handcuffs were used when detaining a subject, but does not wish to file an official formal complaint.	Purposes Only)
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D. Serious Misconduct

Serious Misconduct is understood by the Tiverton Police Department to mean suspected criminal misconduct and the following misconduct:

1. All civil suits alleging any misconduct by an employee while acting in an official capacity;
2. All civil suits against an employee for off-duty conduct (while not acting in an official capacity) alleging physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
3. All criminal arrests or filing of criminal charges against employee;
4. All allegations of unlawful discrimination (e.g., on the basis of race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, or cultural group, but excluding employment discrimination);
5. All allegations of an unlawful search and seizure;
6. All allegations of false arrests or filing of false charges;
7. Any act of retaliation or retribution against an officer or person;
8. Any act of retaliation or retribution against a person for filing a complaint against an employee;
9. All allegations of excessive use of force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose);
10. Any failure to complete use of force reports required by Tiverton Police Department policies and procedures;
11. The providing of false or incomplete information during the course of a Tiverton Police Department investigation, or in any report, log, or similar document;
12. All incidents in which: (1) a person is charged by an officer with assault on a Police Officer or resisting arrest or disorderly conduct, and (2) the Town Solicitor or the Attorney General's Office notifies the department that it is dismissing the charge based upon officer credibility, or a judge dismissed the charge based upon officer credibility; or
13. All incidents in which Tiverton Police Department has received written notification from the Town Solicitor or the Attorney General in a criminal case that there has been: (1) an order suppressing evidence because of any constitutional violation involving potential misconduct by a Tiverton Police Department employee, or (2) any other judicial finding of employee misconduct made in the course of a judicial proceeding, or any request by a federal judge, state judge, magistrate, or municipal judge that a misconduct investigation be initiated pursuant to some information

developed during a judicial proceeding before a judge or magistrate. The Tiverton Police Department shall request that all such entities provide them with written notification whenever it has been determined that any of the above has occurred.

- E. Investigation of Public Complaints: Supervisor's Role/Responsibility
1. The supervisor assigned to investigate a citizen complaint shall ensure the following protocols are applied in all investigations:
 - a. Every complaint must be investigated and evaluated based on the Preponderance of Evidence standard.
 - b. Any supervisor who is the subject of a complaint, or who authorized the conduct that led to the complaint, is explicitly prohibited from investigating said incident.
 - c. Supervisors shall ensure that all officers who use force, or are involved in the use of force, shall submit a written statement regarding the incident, using the Use of Force reporting form. The investigating supervisor will obtain statements from officers who witnessed a use of force.
 - d. During the investigation of a citizen complaint, all relevant evidence including circumstantial, direct, and physical will be considered, and credibility determinations made, if feasible. Officer's or employee's statements will not be given any automatic preference over a citizen's statement, nor will a witness' statement be disregarded on account that the witness is connected to the complainant. Every effort will be made to resolve material inconsistencies or discrepancies between witness statements and other collected evidence.
 - e. The Supervisor will not close an investigation because the complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of injury, or the complainant will not provide additional medical statements or written statements.
 - f. The Supervisor will consider whether any rule, policy, or procedure of the Tiverton Police Department was violated.
 - g. Conduct an investigation in accordance with the procedures outlined in this policy.
 2. At the conclusion of the investigation the supervisor shall prepare an investigative report in accordance with the requirements outlined in this policy.
- F. Employee Responsibilities to Report Misconduct
1. An employee must report any instances of misconduct as soon as practicable following receipt of information regarding the misconduct.
 2. In applicable circumstances, employees are to prevent the deterioration or destruction of any evidence that would support or refute the allegation of misconduct.

- G. Confidentiality of Complaints
1. All employees who have knowledge that a complaint has been submitted, or will likely occur, are prohibited from discussing material issues related to the matter.
 2. Exemptions include employees subject to the investigation when consulting with Union or legal representation, in accordance with supervisory directives, testifying at an official hearing regarding the matter, or otherwise authorized by law, policy, or regulation.
- H. Time Limits on Completing Internal Affairs Investigations
1. Generally, the department should strive to complete internal investigations as soon as practical. In cases of formal investigations, it may be possible to complete such an investigation within a few days or a calendar week. Once assigned, administrative investigations by a supervisor should be completed and forwarded to the Deputy Chief of Police for review within thirty (30) days. The Chief of Police may waive the 30-day requirement for complex investigations and investigations involving extenuating circumstances.
 2. Administrative investigations conducted by the Deputy Chief of Police shall be a priority for the department, and should be expeditiously investigated and reviewed. These investigations should be completed and forwarded to the Chief of Police for review within thirty (30) days. The Chief of Police may waive the 30-day requirement for complex investigations and investigations involving extenuating circumstances.
 3. Time limits governing disciplinary action which may arise from internal investigations for employees shall comply with any applicable State or Federal statutes, Tiverton Town Ordinances, and provisions of the respective labor agreements for sworn and non-sworn employees.
 4. Supervisors shall be held accountable for the quality of their investigations. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough investigation, neglects to recommend appropriate corrective action, or neglects to implement appropriate corrective action.
- I. Notifying Complainant Regarding Status of Complaint Investigation
1. Upon receipt of a complaint, the Deputy Chief of Police shall provide a copy of the Complaint Form documentation to the complainant, acknowledging receipt of the complaint. For formal investigations, the Deputy Chief of Police will also send a letter to the complainant (if known) acknowledging its receipt and advising the complainant of the name and contact information of the assigned investigator. In some cases, this may be accomplished in person and/or via telephone. A written letter, however, should still be sent to the complainant for additional verification of receipt of the complaint.
 2. The assigned investigator is responsible for providing periodic status reports to complainants on all pending internal investigations. Generally, investigators should maintain periodic contact with their complainants and provide them status reports on the investigation, as far as practical. Such

contact can be accomplished by telephone or email, in lieu of a written letter.

3. For formal or informal investigations, the reporting party shall be notified as indicated below, by the Deputy Chief of Police, informing him/her of the results of the department's investigation. Such notification should normally occur within ten (10) days after the conclusion of the investigation and the determination by the Chief of Police of the "Finding of Facts."

J. Investigative Interviews and Procedures of employees

1. Prior to being interviewed, the employee against whom a complaint has been made shall be advised of the nature of the complaint.
2. All interviews will be conducted while the employee is on duty, unless the seriousness of the investigation or other justifiable reason is such that an immediate interview is required. (refer to applicable CBA)
3. During interviews there will be designated one primary interviewer.
4. The complete interview shall be electronically recorded. The recording will note the time at which breaks are taken in the interview process, who requested the break, and the time at which the interview resumed.
5. The employee shall be provided with the name, rank, and command of all persons present during the questioning.
6. Subject to the approval of the Chief of Police, employees will be administered the applicable Warnings prior to interview:
 - a. Garrity Warnings: For compelled statements if the inquiry is administrative.
 - b. Miranda Warnings: Where the inquiry is criminal and the officer is under arrest or in custody.
7. Employees may have Union representation during the Internal Interview.
 - a. Employees, under internal (administrative) review, may have present a union representative with them during any administrative internal investigative interrogation so long as the representative is not involved in any manner (i.e. a witness or subject of the complaint) with the incident under investigation, or a conflict of interest does not exist. (Note: refer to applicable CBA)
 - b. The representative's role is primarily that of an observer and shall not be permitted to interrupt the interview except for the purpose of advising and/or conferring with the employee who is concerned about a contractual right.
 - c. In criminal investigations the employee has the right to talk to legal counsel or to have one present during questioning.
8. Examinations and Searches
 - a. The department may direct that an employee undergo an intoximeter, blood, urine, psychological, polygraph, medical examination, or any other exam not prohibited by law, if it is believed that such an examination is pertinent to the investigation, so long as they do not violate law, or any CBA.
 - b. An on-duty supervisor may direct an employee to submit to a breath, blood, or urine test when there is reasonable suspicion

that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct, and is required to submit to such tests as the result of either being involved in a traffic accident with a department vehicle or involved in a discharge of a firearm on duty.

- c. An employee may be required to participate in a lineup if it is used solely for administrative purposes. This does not in any way affect the requirements of a legal order to participate.
- d. Desks, lockers, storage space, rooms, offices, equipment, information systems, work areas, and vehicles are the property of the Town of Tiverton and are subject to inspection. They may also be searched to retrieve town owned property, or to discover evidence of work related misconduct, if there is reason to suspect (reasonable suspicion) such evidence is contained therein.
- e. Private property can be stored in areas mentioned above; however, employees will not expect privacy in those areas. Only those employees who are acting in their official capacity may be authorized to search or inspect areas assigned to other employees.

K. Disposition and Adjudication of Complaints

- 1. All investigations into citizen complaint allegations of misconduct require review and disposition by the employee's chain of command.
- 2. All citizen complaint allegations of employee misconduct will be fully investigated and documented.
- 3. All summary actions shall be documented and copies and disposition(s) provided to the subject employee. Copies may, where appropriate, be incorporated in the employee's performance evaluation.
- 4. Once the investigation is deemed complete, the primary investigative authority for the investigation shall review the complaint report and investigative findings. This authority will compile a report of findings and provide a disposition for each allegation as follows:
 - a. *Sustained*: where the investigation determines, by preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the employee were improper;
 - b. *Not sustained*: where the investigation determines, by preponderance of the evidence, that there is insufficient fact(s) to decide whether the alleged misconduct occurred;
 - c. *Exonerated*: where the investigation determines, by preponderance of the evidence, that the alleged conduct did occur but did not violate Tiverton Police Department policies, procedures, or training; or
 - d. *Unfounded*: where the investigation determines, by preponderance of the evidence, that there are no facts to support that the incident complained of actually occurred.
- 5. Investigative findings shall also include whether: (i) the action complied with policy, training, and legal standards regardless of whether the complainant suffered harm; (ii) the incident involved misconduct by

any employee; (iii) the use of different tactics should or could have been employed; (iv) the incident indicates a need for additional training, counsel, or other non-disciplinary corrective measures; and (v) the incident suggests that the Tiverton Police Department should revise its policies, training, and tactics.

6. Disciplinary action shall be administered in accordance with department policy and the applicable CBA.
 7. Following final disposition of the complaint, a letter shall be sent to the complainant, addressed from the Chief or his/her designee, explaining the final disposition.
 8. Whenever reasonably possible, the investigation of complaints should be completed within thirty (30) days from the time the department knew, or should have known, about the alleged violation; unless a stay is granted by the Chief of Police, or another time frame is required by departmental policy, law, or applicable CBA.
 9. Final disciplinary authority is vested in the Chief of Police.
 10. In cases where there exists probable cause to believe that a fraudulent complaint was logged (officially documented) in violation of Rhode Island law, the case may be referred to the Town Solicitor Attorney General's Office for a prosecutorial determination.
- L. Internal Affairs Records and Confidentiality
1. Internal Affairs case files and information shall be maintained separately from personnel records.
 2. Internal Affairs information is considered confidential and will be retained under secured conditions within the Deputy Chief of Police's Office.
 - a. Internal Affairs case files and personnel dispositions may not be released to any source without prior approval of the Chief of Police, unless otherwise provided by law.
 - b. Case investigation files shall be retained for a period of time as defined by law, CBA, or the Chief of Police.

V. TRAINING

The department will continue to provide training to all employees on the citizen complaint process and the appropriate responses in handling citizen complaints, as developed and administered by the Planning and Training Sergeant.