

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

1. PURPOSE

- A. The internal affairs function is established to insure the integrity of the agency is maintained through an internal system whereby objectivity, fairness and justice are assured by an impartial investigation and review. The internal affairs function aims to clear the innocent, provide early indicators of possible personnel issues, establish guilt of wrongdoers, facilitate timely and fair discipline, identify defective polices, and provide for citizen review.

2. POLICY

- A. In order to achieve the purposes stated, the South Burlington Police Department internal affairs function will promptly investigate any and all complaints of misconduct or corruption by department personnel, made by citizens or employees, or complaints directed at the department itself or its policies.

3. AUTHORITY

- A. The responsibility for the overall supervision and control of the department's internal affairs function shall lie with the Chief of Police. In cases where the Chief of Police is the subject of an investigation the City Manager shall be responsible for the overall supervision and control of the investigation.
- B. The officer assigned to investigate an internal investigation acts directly under the authority of the Chief of Police. The investigating officer has the authority to investigate any actions or omission of action by a member that may be in conflict with the duties and obligations of the member, regardless of rank. Every member of the department shall be required to fully disclose their actions and or knowledge pertaining to the investigation, whether subject, complainant, and/or witness, provided it is not during a criminal complaint interview.
- C. The internal affairs function is responsible for:
 - 1. Recording, registering, and controlling the investigation of complaints against department employees, or the department itself;
 - 2. Supervising and controlling the investigation of alleged misconduct or corruption within the agency; and
 - 3. Maintaining the confidentiality of the internal affairs investigations and records.

4. TYPES OF INVESTIGATIONS

A. PERFORMANCE COMPLAINTS

- 1. Complaints in this category are considered to be minor in nature and are normally handled by first line supervisors (Sergeants). Complaints received from within or from outside the organization that are categorized as performance complaints shall be handled as a performance issue and not as an internal investigation.
- 2. Examples of performance complaints could include but are not limited to:
 - i. Procedural matters,
 - ii. Poorly written reports,

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

- iii. Minor driving infractions,
 - iv. Manner of dress.
3. It is also recognized that underlying performance issues may be indicative of more serious underlying issues which may require employee intervention or formal investigation.
 4. Failure to respond to retraining or other intervention related to performance issues can rise to the level of formal discipline.

B. FORMAL COMPLAINTS

1. Internal investigations are concerned with complaints or information received of personal abuse, domestic or relationship violence or abuse, stalking, sexual assault, other illegal actions, unethical and unprofessional conduct generally classified as follows:
 - i. Any alleged or suspected breach of integrity or case of moral turpitude from whatever source it may be reported or developed;
 - ii. Any situation in which a citizen has been injured or killed by an officer, whether on duty or not;
 - iii. Any situation involving the discharge of firearms by an officer with the following exception(s):
 1. Unintentional discharge of a department owned weapon which does not involve death, injury or property damage.
 2. Euthanizing injured animals.
 3. Firearms Training or other legitimate firearms events.
2. Commission of any crime defined by Vermont statute or federal law as a felony or misdemeanor. Complaints shall be investigated by the Chief of Police.
3. The acceptance of gifts or gratuities, unprofessionalism or rudeness, favored treatment, or any activity or conduct which is prejudicial to the policy or rules and regulations of the South Burlington Police. Complaints may be investigated at the direction of the Chief of Police.
4. In every instance, complaints will ultimately be reviewed by the Chief of Police. The City Manager shall review all investigations related to conduct which require reporting to the Vermont Criminal Justice Training Council pursuant to Title 20 VSA 2403.

5. COMPLAINT PROCESSING

- A. Any person may register a complaint against the Department or an individual member to include; citizens (including persons in custody) and members of the organization.

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

- B. Anonymous complaints can be difficult to investigate; however, the agency should carefully review each complaint for validity before disregarding it for lack of credibility. It shall be the responsibility of all department members to adhere to this policy.
- C. All parties calling to register a complaint will be directed to speak with the OIC or, if unavailable for an extended period of time, may be referred to a Division Lieutenant or the Chief of Police. Citizens wishing to file a complaint may also be directed to the Department website complaint / complaint portal.
- D. The complainant will be dealt with in a courteous and professional manner and whenever possible, in person.
- E. Persons calling in concerns that are immediately resolved by a supervisor over a clarification of department policy or law are not considered complaints for written documentation purposes.
- F. All complaints that are not immediately resolved by the intake supervisor due to confusion over proper police procedure or law where a supervisor must make further inquiry to determine misconduct will be documented by use of a complaint intake form.
- G. If a written complaint is received by mail, phone, or electronic communication, a letter shall be sent to the complainant acknowledging receipt of the complaint. The responsibility for sending this letter shall lie with the intake supervisor except in cases when the complaint is forwarded to the Chief of Police for formal investigation. In those instances, the Chief of Police will be responsible for acknowledging receipt of the complaint.
- H. If the conduct alleged is of a criminal nature or may become criminal in nature, the Chief of Police or City Manager may contact an outside agency to conduct an independent investigation separate from the internal investigation.
- I. Citizen complaints will not be investigated if received more than 90 days after the alleged incident except in circumstances when the complaint involves alleged criminal activity or when the complainant can show worthy cause for not coming forward sooner.

J. PERFORMANCE COMPLAINTS – PROCESS

1. The intake supervisor shall complete the Citizen Complaint Intake Form. The intake supervisor may need to delegate the complaint to another supervisor, specifically the supervisor responsible for the member or action in question.
2. The responsible supervisor will inform the officer of the complaint and take necessary steps to determine whether an infraction has occurred and, if sustained, take necessary corrective action to resolve the complaint.

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

3. The responsible supervisor shall complete a Complaint Disposition Form. On this form the supervisor shall indicate the appropriate adjudication, action taken, and disposition based upon their findings. The adjudication shall be classified as:
 - i. **Sustained** - the allegation is supported by sufficient evidence to justify a reasonable conclusion of a violation of law or department policy.
 - ii. **Non-Substantiated** – Insufficient evidence exists to either prove or disprove the allegation / investigation.
 - iii. **Unfounded** – All information firmly supports the allegation is false. The member involved is totally cleared / absolved of any misconduct.
 - iv. **Proper Conduct** – The incident occurred, but was lawful and proper. The member involved is totally exonerated of any misconduct.
 - v. **Policy Failure** – The incident occurred, but was lawful and proper in accordance with policy and procedure, however a review of such policies and / or additional training may be necessary to prevent future allegations of misconduct. The department member is totally exonerated of any misconduct.
 - vi. **Misconduct Not Based Upon the Complaint, Sustained** - substantiated misconduct not alleged in the complaint.
4. Informal complaints received will be handled and completed within 30 days, unless unusual circumstances are involved.
5. The supervisor handling the complaint is responsible for notifying the complainant of the outcome of the complaint by phone or in writing. This notification shall be documented on the disposition form.
6. The affected officer will review the complaint disposition and initial or sign the form indicating that they are aware of the complaint status.
7. The Citizens Complaint Investigation form and disposition form will be forwarded to the involved officer's current year file as a means of evaluation criteria during the annual evaluation. A copy of the investigation will also be forwarded to the Chief of Police for record retention and reporting purposes.

K. FORMAL COMPLAINTS - PROCESS

1. All complaints received in person, via telephone, or via the compliment / complaint portal which require formal investigation will follow the procedures as set forth here.
2. Persons who wish to file a formal complaint against any member of the South Burlington Police Department shall immediately be directed to a supervisor. The supervisor will provide the complainant with their name, rank and other appropriate contact information for identification purposes.

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

3. Members will treat a complainant courteously and with respect and civility, recognizing the difficult position people who file complaints against law enforcement may feel they are in. If a member takes the initial complaint, they shall discuss the matter with no one other than their direct supervisor for purposes of reporting the allegation to the chain of command.
4. Should the complainant, after speaking with the intake supervisor and being advised of the complaint procedure, insist on filing their complaint personally with a higher authority, appropriate arrangements to refer the complainant to that higher authority shall be provided.
5. Following a verbal discussion as to the substance of the complaint, the intake supervisor shall furnish the complainant with a blank copy of the Citizen Complaint Form. The intake supervisor providing the form to the complainant must advise them they have 14 days to complete and return the form to continue the process. If the citizen has impediments to completing the form, the intake supervisor shall offer to record their statement and/or write the statement on the complainant's behalf.
6. The intake supervisor will complete the Citizen Complaint Intake Form and shall include a brief comment relative to the complainant's apparent rationality and demeanor. Should they suspect the complainant is under the influence of an intoxicant or drug, or is suffering from a psychological disorder, or evidence any other trait or condition bearing on the complainant's credibility, these conditions and descriptions shall be noted together with any other pertinent remarks. Should the complaint be received over the phone, the call should be recorded whenever possible.
7. In those instances where a complainant has alleged the use of excessive force by a member, the intake supervisor taking the complaint shall carefully note the presence of any unusual marks, bruises or abrasions on the person or the complainant. They shall record all such injuries by the use of color photography or video and collect witness contact information whenever possible.
8. The Citizen Complaint Intake Form shall be forwarded, either in person, via electronic means, or by sealed envelope, to the intake supervisor's Lieutenant. Exceptions to this work flow include if the Lieutenant in question is party to the complaint or such action would otherwise undermine the integrity of the internal investigation process.
9. In cases alleging criminal conduct on the part of a member and after a decision by the Chief of Police to do so, the Chief of Police will advise the State's Attorney's Office, Vermont Attorney General's Office and/or any other appropriate Department/Agency of the nature of the complaint. The Chief of Police or their designee will maintain liaison with the State's Attorney's Office, Vermont Attorney General's Office and/or any other appropriate Department/Agency and may seek legal advice and assistance in case preparation.

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

10. The Chief of Police or their designee will respond to the complainant, acknowledging the complaint has been received and is being investigated.
 11. Whenever practical and possible, the Chief of Police or designee shall provide the complainant with periodic status reports pertaining to the progress of the investigation.
 12. At the completion of the investigation the Chief of Police will advise the complainant of the findings:
 - i. **Sustained** - the allegation is supported by sufficient evidence to justify a reasonable conclusion of a violation of law or department policy.
 - ii. **Non-Substantiated** – Insufficient evidence exists to either prove or disprove the allegation / investigation.
 - iii. **Unfounded** – All information firmly supports the allegation is false. The member involved is totally cleared / absolved of any misconduct.
 - iv. **Proper Conduct** – The incident occurred, but was lawful and proper. The member involved is totally exonerated of any misconduct.
 - v. **Policy Failure** – The incident occurred, but was lawful and proper in accordance with policy and procedure, however a review of such policies and / or additional training may be necessary to prevent future allegations of misconduct. The department member is totally exonerated of any misconduct.
 - vi. **Misconduct Not Based Upon the Complaint, Sustained** - substantiated misconduct not alleged in the complaint.
- L. Compliance
1. Members who are subject to an internal investigation will not discuss the matter with any employees except the assigned investigator(s), supervisor(s) who have a direct involvement in the investigation, peer support team member(s), and any employee acting as the member's representative.
 2. Any member who is aware of an internal investigation and possesses relevant information to that inquiry is required to bring it to the attention of their supervisor or the assigned investigator(s). A failure to do so, even if not specifically asked for, may result in significant disciplinary action. This section specifically excludes an employee's representative and peer support member(s).
 3. All information, documents, recordings, and other material relevant to an internal investigation shall be considered confidential and privileged. The assigned investigator(s) shall take all reasonable and necessary precautions to maintain the confidentiality of such items and ensure that it is provided only to supervisors within the chain of command who have a direct and authorized involvement in the internal investigation process.

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

6. EXIGENT RELIEF FROM DUTY

- A. A supervisor may relieve a Department member of duty when there are indications that the member has been consuming alcohol and/or is under the influence of drugs, or for any other reason, such as a mental health crisis which would preclude the member from safely carrying out their duties. An emergency relief of duty under this authority is considered a temporary administrative action due to a member's physical or psychological fitness for duty.
 - i. NOTE: Any person so relieved of duty shall be instructed to report to the Chief of Police as soon as reasonably practicable, unless circumstances dictate a different course of action. The supervisor imposing or recommending the exigent relief from duty will report at the same time.
- B. If an employee is relieved of duty, the duty lieutenant must be notified immediately. The employee shall be placed on sick leave in accordance with Article III Section 8 (12) of the Collective Bargaining Agreement between the City and the SBPOA.

7. INTERNAL INVESTIGATION PROCESS

- A. The Chief of Police shall process the complaint and assign an investigator. The Chief of Police or the investigator will make notification to the affected officer within two working days of receiving a complaint which warrants and internal investigation, unless doing so would compromise the integrity of the investigation.
- B. As soon as practical, the member shall receive in writing, a statement of the allegations, any written or recorded statements prepared by the complainant and the employee's rights and responsibilities relative to the investigation. This notification and subsequent interview shall be discretionary; dependent upon the nature of the allegations, which in some cases, may dictate that the notification not be made. When it is determined that the notification should be made, it must be determined whether the employee will receive administrative or constitutional rights.
- C. When an employee is advised of administrative rights as contained in the Notification and Administrative Rights of Employees Under Investigation Form, the employee is required to answer all questions fully and truthfully, and disciplinary action, including dismissal, may be imposed for a refusal to answer. If a separate investigation into a policy violation is occurring simultaneously with a criminal investigation, the affected employee should be interviewed following the criminal investigation interview based upon Miranda. The internal investigator will not reveal information obtained from the affected employee to the criminal investigator.
- D. In cases where the Department desires to have the option of using any statements made by the employee in a subsequent criminal proceeding the employee must be advised of their Miranda rights. The employee must be advised that no adverse disciplinary or administrative action will be taken based upon a refusal to answer any questions.

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

- E. In any case where the option to use incriminating statements must be retained, the investigating officer shall have the employee complete the Notification and Constitutional Rights of Employees Under Investigation Form.
- F. In all cases, the provisions of Article III, section 8: Employees Bill of Rights of the Police Officer's Labor Contract shall be complied with by the investigating officer. The internal investigator will follow the following minimum steps;
 - 1. Obtain a detailed and comprehensive statement from the complainant, if not already completed upon complaint intake.
 - 2. Interview any and all witnesses.
 - 3. Interview the accused employee.
 - 4. Regularly keep the Chief of Police briefed on the status of the investigation.
 - 5. Periodically contact the complainant concerning the status of the investigation.
 - 6. Bring the investigation to an expeditious conclusion. No investigation will exceed 90 days, except in extenuating circumstances where the Chief of Police has approved such an extension.
 - 7. The employee shall not become involved in the investigation in any manner unless expressly requested to do so by the Chief of Police.
- G. Upon completion of the investigation, the investigating officer shall forward the investigation to the Chief of Police along with recommended actions concerning administrative action, in the following format:
 - 1. **Allegations** - State as concisely as possible the specific allegations and cite the specific section of the department's policies, procedures, rules and regulations that deal with the allegations. Enumerate the allegations where there are more than one.
 - 2. **Details of Complaint** - Show a chronological summary of the incident or event in report format. Any verbal statements by witnesses or others interviewed will be summarized in the report.
 - 3. **Finding of Fact** - Show a summary of the facts determined by the investigation.
 - 4. **Attachments** - Enumerate all attached forms, statements or other supporting documentation.
 - 5. **Prepare a Complaint Disposition Form** - On this form indicate the appropriate recommended adjudication and disposition based upon the finding of facts. The adjudication shall be classified as one of the following:
 - i. **Sustained** - the allegation is supported by sufficient evidence to justify a reasonable conclusion of a violation of law or department policy.
 - ii. **Non-Substantiated** – Insufficient evidence exists to either prove or disprove the allegation / investigation.
 - iii. **Unfounded** – All information firmly supports the allegation is false. The member involved is totally cleared / absolved of any misconduct.
 - iv. **Proper Conduct** – The incident occurred, but was lawful and proper. The member involved is totally exonerated of any misconduct.
 - v. **Policy Failure** – The incident occurred, but was lawful and proper in accordance with policy and procedure, however a review of such policies and / or additional

SOUTH BURLINGTON POLICE DEPARTMENT
PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

training may be necessary to prevent future allegations of misconduct. The department member is totally exonerated of any misconduct.

- vi. **Misconduct Not Based Upon the Complaint, Sustained** - substantiated misconduct not alleged in the complaint.

- H. When the act complained of is a crime and the evidence is such that had the action been by a private person would have resulted in arrest, the investigating member will explain the circumstances to the Chief of Police and request a decision as to whether:
 - i. The accused member should be arrested forthwith; or
 - ii. A warrant for arrest should be applied for; or
 - iii. Whether criminal action should be delayed pending further investigation and consultation with the State's Attorney's Office and/or Attorney General's Office.

- I. The Chief of Police shall review the investigation for form and content as well as adjudication and disposition of the complaint. The Chief of Police shall convene an Internal Review Board (IRB).

- J. The Internal Review Board, consisting of representatives of the rank structure and a bargaining unit officer, shall review the investigation. The intent of the IRB is to review the investigation from a non-biased and non-judgmental perspective. The IRB shall issue a recommendation either in concurrence or non-concurrence with the investigating officer's recommendation. If in non-concurrence, they shall issue their own recommendation with justification. The report package is then returned to the Chief of Police.

- K. The Chief of Police shall then review the investigation with all recommendations. If all is in order, the Chief of Police shall complete a final complaint disposition form and cause the following to occur:
 - 1. Notification to the accused member of the final adjudication and disposition. This notification shall be made by providing a copy of the Complaint Disposition Form.
 - 2. Notification to the complainant of the adjudication and disposition of the investigation, in writing.

- L. A copy of the adjudication Complaint Disposition Form will be forwarded to the employee's current year file.

- M. If it is determined that criminal prosecution is warranted, the investigator will be directed to submit the case to the State Attorney's Office for prosecution.

- N. The Chief shall file the investigation in a secure file to be retained for statistical purposes. No record of a citizen complaint or other internal investigation shall be kept in the Records Division.

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

8. SPECIAL INVESTIGATIVE PROCEDURES

- A. An employee may be requested to provide certain information, or submit to testing or examination in the course of an investigation. Such procedures shall be:
 - 1. conducted only with the express authorization of the Chief of Police, and
 - 2. specifically directed and narrowly related to the particular investigation.

- B. Examples of specific requests that may be made of employees during an Investigation include, but are not limited to the following:
 - 1. Polygraph examinations.
 - 2. Medical, psychiatric, or laboratory examinations.
 - 3. Photographs.
 - 4. In-person line-up, and
 - 5. Submission of financial disclosure or other personal papers.

9. RECORDS

- A. The Department shall maintain a record of all complaints. The records activity is a function of the internal investigations component and is an exception to personnel records to the extent the investigative work product will be filed separately and will be under the control of the Chief of Police.

- B. All records pertaining to citizen complaints and internal investigations shall be maintained in a secure file. Internal investigations shall be maintained for a period of seven years.

- C. The Chief of Police shall prepare an annual summary of internal investigations at the end of each calendar year. The report shall be statistical in nature and shall not identify any member by name. The summary report shall contain information relating to:
 - 1. The number of investigations
 - 2. The adjudication of those investigations
 - 3. Disciplinary action
 - 4. Any other pertinent information.

10. SEARCH OF DEPARTMENT OWNED PROPERTY

- A. An employee's assigned locker, vehicle, workspace, storage cabinets, digital files, e-mail accounts, etc. are the property of the South Burlington Police Department, and as such, no grant of property right or privacy is expressed or implied. All agency owned lockers, vehicles, workspaces, storage cabinets, etc. are the property of the South Burlington Police Department whether assigned or non-assigned and may be subject to search.

- B. Except in exigent circumstances, only the Chief of Police or their designee may authorize a search of an individual employee's assigned locker, vehicle, workspace, storage cabinet, etc.

SOUTH BURLINGTON POLICE DEPARTMENT

PR-306: Internal Affairs

Effective: 11/9/2020

Updated: 10/16/2020

- C. During any authorized search, at least one supervisory member shall be present, along with the investigating member and the employee who has been assigned or is using the property subject to search if possible.

11. POLICY FAILURE

- A. When adjudicating a complaint, it may be found a citizen has a valid and justifiable grievance, but the member involved acted properly within the prescribed policy.
- B. In such cases, the investigating member shall recommend the appropriate adjudication as it relates to the employee and prepare, in conjunction with the Chief of Police an additional section to the narrative report entitled "Policy Failure."
- C. The investigator's report shall specify:
 - 1. The specific policy involved.
 - 2. The harm done to the complainant or the problem that it caused.
 - 3. Any recommended changes to the existing policy to prevent future problems of the same nature.
- D. If the Chief of Police concurs with the investigator's conclusions regarding the policy failure, they shall assign an employee to be responsible for preparing the appropriate policy change.

APPROVED BY:



DATE: 10/22/2020