



ROXBORO POLICE

109 South Lamar Street
Roxboro, North Carolina 27573
Office 336 599 8345
www.cityofroxboro.com

GENERAL ORDER #: 100-18

SUBJECT: Complaints Against Personnel

EFFECTIVE DATE: January 2018

REVISION NUMBER/DATE:

APPROVED: David L. Hess
David L. Hess
Chief of Police

Purpose

To define the departmental policy for receiving, reviewing, investigating, and determining the appropriate action for allegations of misconduct of a member of the police department.

Policy

The Roxboro Police Department will receive and investigate complaints related to Department procedures or employee conduct in a manner that will ensure the community and the Department of prompt corrective action, where appropriate, and protect employees from unwarranted allegations arising from the lawful discharge of their official duties.

Definitions

Administrative Review: A process which involves Executive Officers initiating reviews of incidents or complaints to ensure adherence to policy, procedure, or to identify training deficiencies.

Citizen Complaints: When a citizen alleges or provides actual evidence an officer acted unprofessional, violated a constitutionally protected right, or department policy.

Performance Complaint: A complaint against an employee that alleges an act or failure to act that constitutes a violation of a City or Department policy that does not rise to the level of an allegation of misconduct. This typically involves a complaint regarding demeanor, improper conduct, improper police action, policy violations, or a similar allegation.

Internal Investigation – An investigation of the actions of an employee conducted by a supervisory employee of the Department. An internal investigation may include a criminal or administrative investigation. (See the Internal Affairs Manual for further explanation.)

“Garrity” Warnings – In accordance with the United States Supreme Court case *Garrity vs. New Jersey*, warnings read to an employee ordering them to make a statement in an administrative investigation and limiting all information provided to the administrative investigation (ensuring the employee's constitutional rights against self-incrimination in a criminal matter). Please change IA Manual to match this definition. This definition makes more sense than the one found in the IA Manual.

I. Administrative Review

The Executive Officers acknowledge, in accordance with General Order 110-1 XI, that policy is used as a guideline for officers and when the totality of circumstances dictates, policy may be violated and an officer's decisions/actions could still be reasonable by the department's operating procedures and applicable law.

Violations of policy, in such cases, should only occur during unusual or extreme circumstances and an officer must clearly articulate their decisions. In such cases, those decisions that violate policy will be reviewed on a case by case basis. Violations could result in personnel action up to and including termination without need for other corrective measures.

Policies are based on police ethics, experience, the desires of the City's citizens and legal considerations. A policy is articulated so that the public and departmental employees can be informed of the principles that the Department and its members will adhere to in the performance of police functions.

- A. Executive Officers are authorized to initiate administrative reviews of incidents to identify adherence to policy, procedure, or to identify training deficiencies. The purpose is to mitigate civil liability to the organization, protect employee interest, and promote transparency.
- B. Incidents that require administrative review include:
 - 1) Vehicle Pursuits;
 - 2) Use of Force;
 - 3) Vehicle Operation; and
 - 4) Reported or observed officer deficiencies

Executive Officers shall conduct random administrative reviews of in car camera footage to improve the agencies public relations, identify training areas, or for performance evaluations.

- C. Performance complaints may initiate an administrative review. In those cases, the supervisor or Executive Officers must review video footage, reports, or inquiry with the employee of details of the incident to validate or dispute the inquiry.
 - 1) Inquiries are not considered complaints therefore are not placed in the employees file, unless the inquiry becomes a formal investigation.
- D. Early Intervention System (EIS) activation occurs when an officer has accrued a certain number of documented incidents within a prescribed timeframe. This does not indicate the officer may have committed any wrong doing, rather, it is a risk management mitigation tool requiring administrative personnel to review why EIS was activated.
 - 1) EIS requires an IA in accordance with the IA manual.
 - 2) An officer under EIS review will not be placed on administrative duties unless the severity of the trigger event requires such action
 - 3) The findings of an EIS review will not be placed in the employee's Personnel File maintained by the City Human Resources Director, unless the findings require disciplinary action.

- 4) EIS outcomes may include the division lieutenant to recommend various training as a means to equip the officer with tools to reduce risk and liability to both them and the agency.
- 5) Officer are reminded not to risk their safety in fear of having EIS activated. Because each of the below incident types are reviewed by all levels of supervision, EIS is designed as a risk management tool and not to look for policy violations. Ideally, supervisors should have previously mitigated any policy concerns should they exist before EIS activates, thus reducing the potential for EIS activation.
- 6) EIS may activate if an officer accrues the below number of documented incidents within the specified time frame or a total of six (6) in any category within 180 days.

Incident Type	Trigger Event Number	Timeframe
Use of Force	5	30 days
Vehicle Pursuit	3	90 days
Citizen Complaint	3	30 days
Vehicle Collision	2	90 days
Total of 6 of any incident		180 days

II. Performance Complaint

When a citizen merely wishes to voice their concern/opinion or dislike of an enforcement action and is not alleging misconduct, a supervisor will allow for a performance complaint to be conducted. A performance complaint is considered an opportunity to obtain factual information to mitigate the citizens concern.

- A. Supervisors may provide public record information, such as the nature of the call, to help educate the citizen. Performance complaints may be handled in person or by phone.
- B. Supervisors are encouraged to help educate the citizen of statutory authority, regulations, and department policy narrowly related to their concern.
- C. Supervisors should take every effort to promote quality customer service so the citizen feels well informed and better educated.
- D. Supervisors must discern the difference between performance compliant and a citizen complaint. A performance complaint is an informal way for the community to voice their concern to a supervisor.
 - 1) A performance complaint does not require formal notice of findings.
- E. Supervisors, as a courtesy, shall inform their division Lieutenant of the concern and outcome to help the Executive Officers stay informed should the citizen escalate the concern to the next supervisory level. Effective communication allows the Executive Officers to support the supervisor and the employee when the actions of the employee adhere to prescribed procedures.

III. Citizen Complaints

Best practices in the law enforcement industry suggest review of actual complaints. To promote the protection of our employees from frivolous complaints and to balance expectations of the

community, complaints may be made in person, by telephone, or in writing. Anonymous complaints will be accepted for investigation to the extent feasible.

- A. When a citizen alleges or provides actual evidence an officer acted unprofessionally, violated a constitutionally protected right, or department policy the complainant must meet the following criteria:
 - 1) Be the actual victim, reporting person or other involved party of a reported incident;
 - 2) Be the parent or legal guardian of a juvenile under the age of 18; or
 - 3) A witness associated with the case.
- B. Citizen complaints are normally referred to the supervisor of the accused officer or employee. When the supervisor is not on duty, the complaint is referred to the appropriate on-duty supervisor or division Lieutenant.
- C. The supervisor will provide the complainant with the approved Complaint Intake form. The form must be signed by the complainant, and notarized, in order for the complaint to be valid and authorize an internal investigation, except for anonymous complaints.
 - 1) When applicable, the receiving supervisor may attempt to resolve a complaint during the initial contact with the complainant, or may delegate such action to the immediate supervisor of the accused member.
 - 2) The supervisor will provide to the complainant, when feasible, a copy of the Complaint Report as written verification of receipt of the complaint, and a description of the department's complaint processing procedures.
- D. Upon review by the division Lieutenant, complaints will be assigned for appropriate investigation as warranted.
- E. Upon completion of the investigation of a citizen complaint, the findings will be forward through chain of command to the Chief of Police who will review the findings.
 - 1) The findings should include a recommendation of action by the supervisor. Supervisors have the authority to discipline officers up to suspending an officer from duty for a 24hour period.
 - a. A supervisor taking such action will notify the division lieutenant as soon as practical.
 - 2) Any administrative or disciplinary action taken against a department member will be kept confidential as required by law, ordinance, or the personnel policies of the City of Roxboro.
 - 3) Executive Officers may increase the level of discipline based on a variety of factors after consulting with the supervisor.
- F. The Chief of Police will notify the complainant of the findings of the investigation, when feasible. The specifics and manner of such notification will be at the discretion of the Chief of Police subject to prevailing law and City polices governing the release of public information.

- H. Immediate notification to the Chief of Police shall occur when allegations of excessive use of force, police brutality, use of deadly force or any incident likely to have an adverse impact upon the Department occurs.

IV. Review of Complaint

- A. Any supervisor may attempt to resolve a complaint by an explanation of departmental policy and procedures where applicable. Attempts to resolve complaints shall be noted on the complaint report.
- B. Performance complaints requiring routine discipline such as rudeness, tardiness, insubordination, inadequate work performance, or other allegations of minor violations of Department policy, or City policy shall be investigated by the employee's direct supervisor.
- C. Supervisors are encouraged to seek assistance, when necessary, from the division Lieutenant in any internal investigation they are conducting. Supervisory personnel will document all complaint investigations and forward it to the division lieutenant using the approved department complaint form.
 - 1) The Chief of Police may halt a supervisory investigation at any time and refer the matter to another agency for investigation. In most cases the State Bureau of Investigation will be utilized.
- D. Upon receipt of a citizen's complaint, the supervisor shall contact the complainant and advise them that the matter is under investigation. The complainant will be informed of departmental procedures for processing citizen complaints. The status of the investigation shall be communicated to the complainant periodically during and at the conclusion of the investigation.
- F. The employee will be notified that he/she is the subject of an internal investigation, unless such notification could compromise the integrity of the investigation.
- G. Investigations of complaints shall be completed within (10) days from receipt of the complaint. In cases that require witness statements or copies of other law enforcement organization records, a timeframe of (30) days is permissible. Extensions may be authorized by the Chief of Police, but not to exceed an additional (30) days.
- H. Upon conclusion of the investigation, all facts and information will be reviewed by the Chief of Police who will review the recommended action pursuant to the Department's policies.
 - 1) To promote fairness of complaints, the Chief of Police will not be the primary contact for intake of complaints, unless they are of criminal nature.
 - 2) The Chief of Police is to remain objective. The Chief will not participate in the investigation. Executive officers will provide the Chief of Police with progress and potential disposition. Executive offices may elicit guidance on applicable personnel laws.
 - 3) Nothing prohibits the Chief of Police from initiating or assigning complaints to be investigated.

V. Internal Affairs

Internal affairs investigations are violations of serious misconduct of an employee that may include, but are not limited to, moral turpitude, criminal behavior, corruption, egregious violations of city policy, detrimental personal conduct or as deemed necessary by the Chief of Police.

- A. Such cases will be assigned to the CID Lieutenant or Sergeant for investigation. The IA investigator will follow the procedures set forth in the department's Internal Affairs Investigation Manual.

VI. Documentation

- A. The supervisor receiving a complaint will complete the appropriate documentation as outlined in the Internal Affairs Manual.
- B. The form will note any attempts to resolve the complaint, attach any relevant documentation, and forward the information to the Chief of Police, through chain of command, no later than the next business day.

VII. Confidentiality

- A. Records pertaining to complaints against the Department or its employees, and any documentation resulting from internal investigations, will be maintained in a secure file that is separate from the Department's central records system and personnel files.
- B. North Carolina General Statutes Section 160A-168 governs the release of such information.
- C. Supervisory personnel **shall not** disclose personnel action taken to any member of the department or public. Disclosure of personnel actions taken against an employee may be disclosed to City Council during a closed session Council meeting, at the discretion of the City Manager, or as provided in G.S. § 160A-168.

VIII. Public Information

- A. The Department will make public its procedures for making complaints.
- B. The Department will make available to the public, and to Department employees, annual statistics pertaining to citizen complaints/internal affairs investigations, upon request.

IX. Scope of Questioning

Serious allegations or violations may require the separation of an internal investigation into criminal and administrative components. Two separate investigations may run parallel to one another. Information gleaned from the administrative component of an internal investigation cannot be shared with the investigator assigned to conduct the criminal investigation without a court order.

- A. Prior to an internal investigative interview that is part of a criminal investigation, the employee under investigation will be administered the *Miranda* rights warning if in custody. The provisions of *Miranda* will apply during the criminal investigation.
- B. Prior to an internal investigative interview that is part of an administrative investigation, the employee under investigation will be advised as follows:

- 1) The employee can be required to answer all questions specifically, narrowly, and directly related to the performance of his/her official duties;
- 2) Refusal to comply with an order to answer such questions is a violation of the departmental directive requiring truthfulness, which may subject the employee to disciplinary action, which may include dismissal;
- 3) Any required self-incriminatory admission made during the administrative investigation interview may be used solely in subsequent administrative proceedings and will not be used against the employee in subsequent criminal proceedings. The provisions of *Garrity* will apply during the course of an administrative investigation when the discipline could include termination.

X. Right to Counsel

- A. Employees are not entitled to have an attorney, supervisor, or other personal representative present during any interview concerning an administrative investigation.
- B. Employees are entitled to an attorney during an interview that is part of a criminal investigation.

XI. Criminal Investigations

- A. At the request of the Chief of Police, the State Bureau of Investigation (SBI) may conduct a criminal investigation arising from an internal investigation. The Department will maintain contact with the District Attorney's Office for necessary legal advice and assistance with case preparation. In all internal investigations, the criminal component and the administrative component will be conducted as separate investigations.
- B. Prior to any interviews about alleged criminal misconduct, the employee under investigation will be advised of the *Miranda* warnings by completing a Waiver of Adult *Miranda* Rights form.

XII. Performance Complaint Investigations

- A. Prior to an interview of an employee under investigation concerning an administrative violation involving a performance complaint, the supervisor conducting the interview shall verbally inform the employee of their rights and responsibilities related to the interview and investigation as listed below. The employee may request this information be provided to them in writing; if this request is made, the supervisor will provide the employee with a Notice of Internal Affairs Complaint form.
- B. The supervisor will advise the employee of the following:
 - 1) The employee will be required to answer all questions fully and truthfully; all questions will be specifically, narrowly, and directly related to the performance of his/her official duties or of detrimental personal conduct;
 - 2) Refusal to comply with an order to answer such questions or failure to answer questions fully and truthfully will be considered gross personal misconduct and may subject the employee to punitive disciplinary action, up to and including termination; and

- 3) In accordance with the *Garrity v. New Jersey* and *Gardner v. Broderick* (U.S. Supreme Court cases), any statements made during an administrative interview may not be used against the employee in subsequent criminal prosecutions.

XIII. Allegation of Misconduct Investigations

- A. Prior to an interview of an employee under investigation concerning an administrative violation involving an allegation of misconduct, the employee shall be provided with and required to complete a *Notice of Internal Affairs Complaint* form.
- B. The form will advise the employee of the following:
 - 1) The employee will be required to answer all questions fully and truthfully; all questions will be specifically, narrowly, and directly related to the performance of his/her official duties or of detrimental personal conduct;
 - 2) Refusal to comply with an order to answer such questions or failure to answer questions fully and truthfully will be considered gross personal misconduct and may subject the employee to punitive disciplinary action, up to and including termination; and
 - 3) In accordance with the cases *Garrity v. New Jersey* and *Gardner v. Broderick* , any statements made during an administrative interview may not be used against the employee in subsequent criminal prosecutions.

XIV. General Investigative Guidelines

- A. Before any interview in a performance complaint investigation, the supervisor conducting the interview will verbally inform the employee under investigation of the nature and details of the complaint and their specific rights and responsibilities. The employee may request this information be provided to them in writing; if this request is made, the supervisor will provide the employee with a completed *Notice of Internal Affairs Complaint* form.
- B. Before any interview in an allegation of misconduct investigation or a special examination in any administrative investigation, the employee under investigation will be provided with a completed *Notice of Internal Affairs Complaint* form.
 - 1) The form will provide the employee with a copy of the allegation(s) and a list of their specific rights and responsibilities during interviews and investigations.
 - 2) The Chief of Police may choose not to inform an employee that he/she is under investigation if the notice is likely to jeopardize the investigation.
- C. All interviews will be held during the employee's regular work hours unless the seriousness of the accusation or other aggravating factors justifies an immediate interview.
- D. Employees under investigation will not be subjected to offensive language, threatened with dismissal or other disciplinary action, or be made promises by any supervisor or the assigned Internal Affairs Investigator.
- E. Administrative investigation interviews concerning allegations of serious misconduct and all criminal investigation interviews will be audio recorded unless a complainant or

witness refuses to be recorded. Interviews regarding performance complaints are not required to be audio recorded, but may be audio recorded at the supervisor's discretion. There is no requirement to video record any internal investigation interview; however, the supervisor may elect to video record an interview at their discretion.

- 1) At no time should internal interviews with an employee be conducted in the department's interview room nor recorded on the department's WatchGuard camera system.
- F. Employees subject to internal investigation may contact the assigned Internal Affairs Investigator to find out the status of the investigation.
- G. Employees will not be permitted to review any portion of an internal investigative file while the investigation is being conducted.
- H. Employees are prohibited from contacting any complainant in a criminal or administrative investigation. This is not intended to restrict employees under investigation from contacting another department employee on a work issue not related to the investigation.

XV. Concurrent Criminal and Administrative Investigations

- A. If an allegation of misconduct alleges an act or acts that constitute both an administrative policy violation and a criminal violation, two separate investigations will be conducted.
- B. The Chief of Police will be responsible for the following:
- 1) Determining if the criminal investigation will be conducted by Departmental personnel or by another appropriate investigative agency (typically the State Bureau of Investigation);
 - 2) Determining if the two investigations will be conducted concurrently (but separately) or if the criminal investigation will take precedence with the administrative investigation to follow after;
 - 3) If necessary, assigning separate internal affairs investigators to the two investigations (if the criminal investigation is investigated internally); and
 - 4) Notifying the involved employee(s) of the above decisions.

XVI. Truthfulness

Employees subject to an internal administrative investigation must answer all questions truthfully. Any deception may result in additional department charges and/or disciplinary action up to and including dismissal.

XVII. Special Examinations

- A. The Department may require medical, truth verification examinations or psychological examinations as part of an administrative investigation. Special examinations may be warranted and used:
- 1) When there is alleged or suspected criminal conduct;
 - 2) When there is suspected use of alcohol, drugs, or other impairing substances;

- 3) When there is alleged or suspected misconduct of a non-criminal nature;
 - 4) When necessary to aid in the identification of an employee who is the subject of the allegation or violation;
 - 5) As part of any internal investigation.
- B. The Chief of Police or designee will order the employee to submit to special examinations. An employee's refusal to comply with such orders may result in dismissal.
- C. An employee may request a breath, blood, urine, psychological, truth verification examination or medical examinations in order to assist in his/her defense. The employee making such a request may be held responsible for any expenses relative to the requested procedures, dependent upon the circumstances of the case.
- D. If an identification line-up is used solely for administrative purposes, the employee may be required to stand in the line-up.
- E. Photographs of Department employees may be taken and used in conducting internal investigations.
- F. Property issued by the Department is subject to inspection at all times. There is no right to privacy or expectation of privacy in City buildings or about City-issued equipment. Evidence of work-related misconduct discovered therein may be used for the purposes of an administrative investigation. Property subject to inspection includes, but is not limited to:
- 1) vehicles,
 - 2) firearms,
 - 3) desks,
 - 4) files,
 - 5) electronic media,
 - 6) and storage lockers.
- G. Employees may be required to submit financial disclosure statements as part of an internal investigation.

XVIII. Employee Rights

- A. Prior to any interview or special examination, the employee under investigation will receive written notification of the complaint or alleged violation. The notification will include a copy of the complaint, or a summary that lists the relevant facts, and the employees' rights and responsibilities during the investigation process.
- B. All interviews may be recorded and conducted when the employee is on duty, except when the seriousness of the matter requires an immediate interview. Employees placed on non-disciplinary suspension during an internal investigation will be considered on-duty during their appearance for such interviews and other required examinations.

- C. Employees under investigation will not be subjected to verbal or physical abuse, and will be treated with civility and courtesy.
- D. Accused employees may contact the investigator to determine the status of the investigation of a complaint.
- E. Accused employees will be provided the opportunity to explain their actions to the Chief of Police prior to the imposition of any disciplinary action.

XIX. Hearings and Appeals

Hearings and appeals that result from internal affairs investigations will be conducted in compliance with the City Roxboro Personnel policies.

XX. Final Disposition

- A. Upon receiving documentation of a supervisory investigation or upon the completion of an internal investigation, the employee’s supervisor will submit recommendations to the Chief of Police regarding whether a violation has been established according to the information and evidence. Final disposition will be determined as follows:

Sustained	The allegation is true and the employee’s action was inconsistent with directives
Not sustained	There is insufficient evidence to confirm or refute the allegation.
Exonerated	The allegation is true, but the employee’s action was lawful and proper.
Unfounded	The allegation is found to be false or not factual. This may be thought of as “not guilty” of a policy violation based on disproving the facts presented in the allegation.
Policy/ Procedure Failure	The allegation is true, but the employee’s action was not inconsistent with directives and there is indication of a need for review and revision of directives.
Training Failure	The allegation is true; however, the action of the employee was consistent with training.
Supervisory Failure	The allegation is true; however, the action of the employee was consistent with direction from a supervisor.
Action was Commendable	The employee’s action was proper and lawful and should be considered for recognition pursuant to the Awards Policy.

XXI. Disciplinary Action

- A. The Chief of Police will review investigation reports and supporting documentation, and will make the final determination for disciplinary action.
- B. Any disciplinary action arising from a supervisory or internal investigation will be administered in compliance with the City Personnel policies and departmental procedures. The City of Roxboro Human Resources Director and the City Manager will be notified and informed as appropriate in all administrative investigations where suspension, demotion, termination, or other change in personnel status is to occur.
- C. Employees wishing to file a grievance of personnel action shall follow the City of Roxboro Personnel Policy Article 10 Grievance Procedure and Adverse Action Appeal.