

## City of Canandaigua Police Department General Order

<b>General Order:</b> 335	<b>Subject:</b> Complaints / Internal Affairs
<b>Authority:</b> Chief Mathew A. Nielsen	<b>Effective Date:</b> January 1, 2009
<b>Rescinds:</b> All Previously Issued Directives	Revised 3/30/09, 11/27/19, 10/06/20

### I. PURPOSE

The purpose of this order is to provide guidelines and procedures for the intake, investigation and disposition of complaints made against Police Department policies, procedures, rules or personnel.

### II. POLICY

Community support for the Police Department and its mission is contingent upon citizen confidence in the integrity of the department, its policies, its rules and its members. It is the policy of the City of Canandaigua Police Department to courteously receive and fairly investigate all complaints made against the department and the department's activities, practices and personnel. The goal of this policy shall be to correct deficiencies in policies and procedures, detect and deter misconduct, instill confidence in citizens regarding the integrity of the department and its personnel, and seek redress for false accusations made against the department and its members.

### III. DEFINITIONS

- A. **Complaint:** For the purposes of this order, a complaint shall be defined as any allegation of an alleged act or omission which, if substantiated, is contrary to the General Orders, other written orders and/or verbal orders of this department or local, state or federal laws.
- B. **Subject Member:** A member or staff of the department who is the subject of a complaint.
- C. **Internal Affairs Officer (IAO):** The IAO for the City of Canandaigua Police Department is the Lieutenant. The IAO shall be responsible for the Internal Affairs function and shall report directly to the Chief of Police in all matters relating to Internal Affairs. The Chief of Police may assign any other member or other outside agency to carry out the function of the Internal Affairs Officer as he deems fit.

**IV. DUTIES AND RESPONSIBILITIES OF MEMBERS OF THE DEPARTMENT**

- A. It shall be the duty and responsibility of all members of the department to:
  - 1. Report violations of laws, ordinances, rules, regulations, policies, procedures or orders by any other department member to their immediate Sergeant or in his absence, a higher-ranking officer.
  - 2. Assist citizens who wish to make complaints by directing them to the appropriate Sergeant or command officer.
  - 3. Cooperate fully and completely with all Internal Affairs investigations/ complaints.
  - 4. Refrain from communicating with anyone regarding an Internal Affairs/complaints investigation unless specifically authorized.
  - 5. File a report through the chain of command to the Lieutenant when involved in a situation likely to generate a complaint.

**V. COMPLAINT PROCEDURE**

- A. Any member below the rank of Police Sergeant who is made aware of any complaint alleging member misconduct shall immediately notify his immediate Sergeant or in his absence, a higher-ranking officer. **An Acting Sergeant shall accept any complaint and forward it to the regularly scheduled Sergeant for the shift and notify the Sergeant by E Mail unless the allegation is criminal or a serious breach in the rules and regulations or General Orders; then the Chief of Police or Lieutenant shall be notified immediately.**
- B. Sergeants, the Lieutenant and the Chief of Police are authorized to receive complaints from citizens or members of the department. Additionally, the Citizen Commendation & Complaint Form is located on the City website and can be accepted by the City Manager or the City Clerk.
- C. The Lieutenant or the Chief of Police shall handle complaints about a Police Sergeant.
- D. The Chief of Police shall handle complaints about the Lieutenant.
- E. The Public Safety Director shall handle complaints about the Chief of Police.
- F. Any Sergeant or the Lieutenant who receives a complaint directly or has been summoned to receive a complaint shall:

1. Receive the complaint courteously without attempt to dissuade any person from lodging their complaint. Complaints shall be received regardless of the source:
  - a. In-person
  - b. Telephone
  - c. Letter
  - d. Anonymous
  - e. Third party
  - f. E-mail
2. If the complaint relates to a policy or a procedural issue, the Sergeant or Lieutenant shall explain the policy/procedure to the complainant. If after the explanation and conciliations is completed, the complainant is satisfied and the matter is resolved, the Sergeant or Lieutenant shall:
  - a. Notify the 911 center to start a job card for a Personnel Conduct Inquiry.
  - b. Document on the job card the name, address and phone number of the complainant.
  - c. Document in the job card narrative the nature of the complaint and how the complaint was resolved.
3. If the matter is not resolved, or if the complaint relates to other than a policy or procedural issue, the Sergeant / Lieutenant shall start a job card for a Personnel Conduct Inquiry and request the complainant to complete and sign a Citizen Commendation & Complaint Form. Before signing the Citizen Commendation & Complaint Form, the complainant shall be advised of the ramifications of submitting a false written statement.
4. If the complainant will not sign or refuses to complete the Citizen Commendation & Complaint Form, the Sergeant/ Lieutenant shall complete the Citizen Commendation & Complaint Form fully detailing the circumstances of the complaint and their attempt to have the complaint form completed and signed.
5. If the complaint is regarding an officer's fitness for duty, the Sergeant or Lieutenant may relieve any officer from duty due to physical, psychological, or other conditions as they deem fit. In the event that an Acting Sergeant receives the complaint and believes a member is unfit for duty, he should contact the Chief of Police or Lieutenant for guidance. If circumstances warrant, the officer's duty weapon and credentials shall be temporarily seized and placed in a secure area. Further the relieved officer will be advised and assisted in any way if counseling is needed through the City's sponsored EAP program.
6. The Citizen Commendation and Complaint Form in all cases shall immediately be forwarded to the Lieutenant for determination on follow-up of the complaint.

7. Complaints made by highly intoxicated complainants should be given a contact name and number of a Sergeant to contact the following day when he or she is sober. The only exception is if the highly intoxicated individual is making a claim that an officer has engaged in criminal activity or other serious breaches of General Orders and/or Rules or Regulations. The complainant should be re-interviewed at a later time when he or she is sober. Any discrepancies between the initial report, taken from the individual in a highly intoxicated state, and later, should be thoroughly noted.
- G. The Chief of Police shall be notified immediately if a member of the department is:
1. Arrested or charged with a criminal offense.
  2. Accused or questioned regarding conduct that would constitute a crime.
  3. Temporarily relieved of duty.
  4. Involved in an action resulting in physical injury or death to another person.
  5. Accused of serious misconduct.
  6. Accused of excessive force or violating a person's civil rights.
  7. Accused of sexual harassment.
- H. The Citizen Commendation and Complaint Form shall be reviewed by the Lieutenant and assigned out for investigation within 48 hours. The Lieutenant will notify the Chief of Police of the complaint and assign investigations as follows:
1. Assign the initial investigation of minor complaints to a Sergeant or other member as appropriate, or
  2. The Lieutenant may complete the investigation into the complaint personally.
- I. Any formal complaint filed by a member against another member shall be recorded on an interdepartmental memo. The complaint memo will be submitted directly to the Chief of Police. The Chief of Police will review the complaint and may assign another member to investigate the complaint. A sworn deposition from the complainant member will only be requested if the circumstances warrant.

**VI. DUTIES AND RESPONSIBILITIES OF THE INITIAL INVESTIGATION OFFICER**

- A. It shall be the duty and responsibility of the Sergeant or other designated officer to immediately initiate, conduct and document a preliminary investigation to include:
1. Interview the complainant and secure a sworn statement.
  2. Locating and documenting all available witnesses, phone numbers and addresses.
  3. Identifying of all department members involved.
  4. Collections of any evidence pertinent to the complaint.
  5. Photographs of the scene and the complainant, as appropriate.
  6. Securing appropriate medical examination or treatment and obtaining an authorization for release of medical records, when appropriate.
  7. Neighborhood canvass.
  8. Formally request permission from the Lieutenant or the Chief of Police to review of the body worn camera video of the subject officer(s) involved in the complaint.
  9. Review of any other external video captured by the external video system.
  10. Collection of relevant information to include:
    - a. All reports relating to the incident.
    - b. Officer Log Sheet(s).
    - c. Prior history of the complainant.

**VII. DUTIES AND RESPONSIBILITIES OF THE INTERNAL AFFAIRS OFFICER (IAO)**

- A. It shall be the duty and responsibility of the Internal Affairs Officer to:
1. Review and screen all initial investigations conducted by Sergeants or other members assigned to see if they meet the criteria to be deemed an Internal Affairs Investigation. Nothing contained herein prevents the Lieutenant from investigating a complaint that does not rise to the threshold of an Internal Affairs Investigation. The Lieutenant shall proceed with the non-internal affairs investigation in the same manner as described within this General Order.

2. The Lieutenant shall confer with the Chief of Police before initiating an Internal Affairs Investigation. If approval is given, the Chief will assign the Internal Affairs number.
  3. Conduct the following specific types of serious complaint investigations:
    - a. Complaints alleging criminal conduct by department personnel.
    - b. Complaints alleging violations of a person's civil rights.
    - c. Complaints alleging excessive use of force.
    - d. Complaints of sexual harassment.
    - e. Allegations of a serious violation of department policy, procedure or rules.
    - f. Actions by members that result in physical injury, serious physical injury or death of another person.
    - g. Any complaint when specifically directed by the Chief of Police
  4. Review the body worn camera video of the officer(s) at the scene of the complaint.
  5. Return the complaint, if necessary, to the appropriate Sergeant or other member for additional follow-up investigation.
  6. Initially maintain Internal Affairs records/complaints and associated reports until the matter is resolved and turned over to the Chief of Police.
  7. Report on all matters pertaining to Internal Affairs/complaints to the Chief of Police and forward all Internal Affairs Reports/Complaints/Counseling Memos to the Chief.
  8. The Chief of Police will notify the City Manager of all internal affairs investigations.
- B. Internal affairs investigations are sensitive and confidential in nature.
1. No member shall discuss or divulge any information concerning an Internal Affairs Investigation to any persons. The accused member may discuss the investigation with his/her union representative or attorney.

## **VIII. INTERNAL INVESTIGATIVE PROCESS**

- A. Upon receipt of the Citizen Commendation & Complaint Form, and any other documentation, the IAO shall:
  1. Review the Citizen Commendation & Complaint Form and the preliminary investigation for completeness.
  2. Return the complaint, if necessary, to the appropriate Sergeant, for follow up investigation.

3. Conduct the internal affairs investigation, if assigned, including a review of the body worn camera video of all officers at the scene of the complaint.
- B. Persons conducting Internal Affairs Investigations or other complaints should interview and depose, when applicable, the subject member. Generally, all facts and evidence shall be gathered before the subject member is interviewed and a preliminary decision as to the type of interview/investigation (administrative vs. criminal) is made. **If after the initial review, it is determined that criminal conduct may have occurred the Chief of Police shall be notified immediately before the Internal Affairs Investigation continues. Generally, if criminal conduct is suspected the Internal Affairs Investigation will be temporarily suspended until such time that the District Attorney and the Chief of Police confer.**
- C. **If criminal conduct is suspected, the Chief of Police may request that the criminal investigation be completed by an outside agency such as the Ontario County Sheriff's Office or New York State Police.**
- D. Prior to being questioned, the subject member shall be:
1. Provided with a copy of his/her administrative rights and a written summary of the allegations per the current PBA/GBC contract. During administrative internal investigations, all members must cooperate to the fullest. All members are required to answer truthfully and completely. Failure to cooperate fully, deception, or hindering the investigation may result in disciplinary action including dismissal. Compelled statements or the fruits thereof cannot be used against a member in any subsequent criminal action. The admissions obtained from compelled statements can be used to form the basis of administrative disciplinary action.
  2. The Chief of Police may seek guidance from the District Attorney's Office before commencing and/or completing the IA investigation if the allegations are criminal in nature.
  3. Entitled to exercise his or her rights pursuant to the terms of the collective bargaining agreement, if applicable.
- E. The Internal Affairs Investigations or any other complaint shall be completed within (120) days of receipt of the complaint. Any extension beyond the limit must be requested in writing and approved by the Chief of Police. If after thirty days from the time the case was initiated the matter is still pending, the Chief of Police shall advise the complainant of the case status. There will however be no time frame limit for completion of the internal investigation if criminal conduct is alleged and an investigation is being pursued by an outside agency.

**IX. CONCLUSION OF INTERNAL AFFAIRS INVESTIGATIONS / COMPLAINTS**

- A. Upon completion of an Internal Affairs Investigation/complaint, the investigating member shall prepare an unbiased written summary containing:
  - 1. An outline of the alleged conduct.
  - 2. The findings relative to the alleged actions.
  - 3. Specific violations of the General Orders, if any.
  - 4. Ancillary issues developed during the investigation.
  - 5. A conclusion.
  
- B. At the completion of the investigation by the Internal Affairs Officer, Lieutenant or other member assigned, the Chief of Police shall make a determination and proceed under GO #340 (Discipline), if applicable:
  - 1. SUSTAINED- Allegations(s) are substantiated.
  - 2. UNFOUNDED- Allegations(s) are false or not factual.
  - 3. EXONERATED- Incident occurred but the member acted lawfully and within department policy.
  - 4. NOT SUSTAINED- Allegation(s) are not substantiated. No sufficient evidence was revealed to substantiate or disprove the allegation.
  - 5. MISCONDUCT NOT BASED ON COMPLAINT- Substantiated misconduct which was other than the allegation(s) identified in the original complaint.
  - 6. INCOMPLETE INVESTIGATION- Complainant failed to cooperate with the investigation and there is not enough evidence available to draw a fair conclusion and apply a finding.
  
- C. Only Internal Affairs Investigations/complaints that are sustained shall be kept within an officer's confidential Personnel file. All others will be kept in a separate secure folder.
  
- D. If the results of the Internal Affairs Investigation or other complaints reveals that the complainant offered a false written statement, the Chief of Police or his designee will determine if criminal charges should be filed.



- E. At the conclusion of any formal complaint investigation and the Chief of Police has made a final decision on the case, the complainant will be notified of the results by mail.
  - F. The internal affairs and/or complaints shall be kept in a Confidential Personnel Folder in a secured area in the Chief of Police's Office and will be kept at a minimum schedule as provided under MU-1 or longer at the discretion of the Chief.
  - G. All submitted Citizen Commendation and Complaint Forms shall be assigned a tracking number and secured in the Chief of Police's Office and will be kept at a minimum schedule as provided under MU-1 or longer at the discretion of the Chief.
- X. Nothing contained in the above general order shall prohibit the Chief of Police from initiating or investigating any complaint or Internal Affairs Investigation.**