

	POLICY & PROCEDURE	SERIES # 801	PAGE 1 OF 16
	<b>SUBJECT</b> <b>INTERNAL AFFAIRS</b> <b>COMPLAINTS &amp; INVESTIGATIONS</b>		EFFECTIVE DATE <b>2/3/2022</b>
			OVERSIGHT <b>Prof. Standards</b>
	DISTRIBUTION <b>ALL MANUALS</b>	AMENDS/SUPERSEDES/CANCELS P&P # 801 dated 05/30/98, 802 dated 03/15/98, 803 dated 09/27/07, 804 dated 04/22/08, and 801 dated 07/15/2019.	

I. PURPOSE:

The purpose of this policy is to establish procedures for reporting and investigating alleged employee misconduct and the adjudication and disposition of investigations pertaining to alleged employee misconduct.

II. POLICY:

The Hampton Police Division will investigate complaints of alleged employee misconduct in a fair and consistent manner.

III. PROCEDURE:

A. The Hampton Police Division will:

1. Thoroughly investigate and adjudicate allegations of misconduct against Division members in a timely fashion to:
  - a. Protect the Public: The public has the right to expect efficient, fair, and impartial law enforcement. Therefore, any misconduct by Division personnel must be detected, thoroughly investigated, and properly adjudicated to maintain a high standard of law enforcement.
  - b. Protect the Division: The Division is often evaluated and judged by the conduct of individual members. It is imperative that the entire organization not be subjected to public censure because of a few of its personnel. When an informed public knows that its police Division honestly and fairly investigates and adjudicates all allegations of misconduct against its officers, the public will be less likely to feel the need to raise a cry of indignation over alleged incidents of misconduct.

APPROVED:  
CHIEF OF POLICE



- c. Protect the Employee: Employees must be protected against false allegations of misconduct. This can only be accomplished through a consistently thorough investigative process.
  - d. Remove Unfit Personnel: Personnel who engage in serious acts of misconduct or who have demonstrated that they are unfit for law enforcement work, must be removed for the protection of the public, the Division, and the Division employees.
  - e. Correct Procedural Problems: The Division is constantly seeking to improve its efficiency and the efficiency of its personnel. Occasionally, personnel investigations disclose faulty procedures that might otherwise go undetected. These procedures can then be improved or corrected.
2. Provide guidelines for the fair and equitable receipt, processing, and investigation of alleged misconduct by Division members.

This process is not to be confused with the normal supervisor/employee relationships that deal with performance and disciplinary matters that occur on a regular basis as necessary.

3. Complete all investigations of alleged misconduct in the strictest confidentiality and privacy, keeping in mind the rights of all parties involved.
4. Maintain all investigations of alleged misconduct separate from other Division records. All investigations of alleged misconduct will be treated as confidential. Access to files is limited to the Chief of Police, personnel involved in the investigation, and any subsequent disciplinary process including members of Human Resources and the City Attorney's Office, material required to be provided to a prosecutor as required *Brady* material, and persons authorized by court order.

Access to, or release of information from case files to persons other than those authorized will be done only after consultation with the City Attorney with the explicit approval of the Chief of Police.

5. Professional Standards will adhere to the Retention Schedule set forth by the Library of Virginia "Records Retention and Disposition Schedule" which is consistent with all legal and administrative requirements.

## B. DISCIPLINARY PHILOSOPHY

1. Discipline in a police organization must be maintained in order to support organizational integrity and effectiveness and to maintain and enhance public trust. The goal of any disciplinary system is to correct the behavior or performance of the employee. By way of training, rewarding, counseling, and punitive actions will inherently enhance the integrity of the agency and the employee. In order to ensure an effective discipline system consistent with the stated goals, purpose, and policy, all persons involved in the investigation are obligated to conscientiously apply the principles and guidelines herein and to judiciously follow the procedures outlined. No system of discipline can be perceived as fair, nor can it succeed in promoting respect and trust within the Division or with the community, without such commitment. Consistency and fairness will be utilized as they relate to all allegations of misconduct.
  - a. Consistency: Holding everyone similarly accountable for similarly unacceptable behavior based upon the totality of the circumstances.
  - b. Fairness: Understanding the circumstances contributing to the behavior and applying consequences in a way that reflects this understanding.
2. The following factors must be considered in order to determine a consistent and fair corrective action when considering discipline:
  - a. Employee Experience: A relatively inexperienced employee may be shown more understanding when making judgment errors than a more experienced employee.
  - b. Employee Motivation: An employee who violates a directive in an effort to accomplish a legitimate police purpose may be given more positive consideration in the determination of consequences than one who was motivated by personal interest.
  - c. Intentional/Unintentional Errors: Generally, intentional errors will be treated more seriously and carry greater consequences than unintentional errors.
  - d. Degree of Harm: The greater the degree of harm generally warrants a greater degree of discipline. Degree of harm is measured by a variety of means, including but not limited to:

monetary cost to the Division, impact on public and organizational trust of the officer.

- e. Disciplinary History: The employee's past record and length of service play a role in assessing the penalty. Considerations that tend to show a need for more severe actions include previous offenses and frequency of offenses.
- f. City of Hampton Discipline Tables: These tables should also be reviewed and considered for corrective action. Please access the following link and scroll to page 18 to review:

## [CHAPTER TWO - EMPLOYEE RELATIONS](#)

### C. MISCONDUCT DEFINED

- 1. Generally, misconduct can be categorized as one of the following:
  - a. Malfeasance: Doing an act that is wrongful in itself.
  - b. Misfeasance: The performance of a lawful action in an illegal or improper manner.
  - c. Nonfeasance: The failure to perform prescribed duties of an office.
- 2. Misconduct by a member of the Division is defined as any action or behavior that was in violation of laws, ordinances, rules and regulations, policies and procedures, or orders of the Division.

### D. DUTY TO REPORT VIOLATIONS

Division members will report every delinquency, dereliction of duty, violation of laws, ordinances, rules and regulations, policies and procedures, and orders that come to their attention through their chain of command.

### E. CITIZEN'S COMPLAINT'S / ALLEGATIONS OF MISCONDUCT

- 1. Reportable Allegations of Misconduct are defined as any allegation, which would be a violation of law, rules and regulations, or policy and procedure. Regardless of the source of information, all allegations of misconduct will be reviewed by the employee's supervisor. If the situation rises beyond a corrective action or an entry on the Supervisor's Record of Employee ("employee record card"), the supervisor will open an administrative investigation. The administrative investigation will follow a prescribed format located on the "J" drive under "Professional Standards/Admin Investigation Format".

- a. Corrective Action: Changing negative behavior before punitive discipline when possible, is the desired outcome for any allegation. This can be accomplished by way of remedial training, counseling or an employee record card entry.

## 2. Receipt of Allegations of Misconduct

- a. Allegations of Misconduct will be received and processed by any police supervisor.

Allegations of Misconduct will be accepted from any internal or external source, in person, by mail, e-mail, telephone, CAD complaint with a Professional Standards Code, or through the Division's Website. Complaints will be accepted from anonymous sources so long as the complaint contains sufficient information to justify a review.

- b. Supervisors will make reasonable and diligent efforts to obtain a statement (written or audio recording) from any complaining party and all witnesses. However, a complainant's cooperation is not necessary for review.
- c. The supervisor receiving the complaint will aid the complainant or any witness if assistance is needed to complete related documentation.
- d. Pamphlets entitled "Commendation and Complaint Procedure" will be maintained for distribution to citizens requesting instruction on procedures. These pamphlets will be located in the Office of Professional Standards, Police Headquarters Lobby display case, and on the HPD Intranet under:  
  
[Commendation & Complaint Procedure](#)
- e. A complainant intentionally filing false and malicious allegations against police personnel may be held accountable through appropriate legal proceedings.

## 3. Reporting Allegations of Misconduct

- a. When an allegation of misconduct is received the supervisor shall review all pertinent evidence; Body Worn Camera, witness statements, and other material facts to determine the appropriate action.

- 1) Review the pertinent material facts to determine whether or not the complaint is feasible. These complaints again will be accepted from any internal or external source, in person, by mail, e-mail, telephone, CAD complaint with a Professional Standards Code, or through the Division's Website.
  - a) If the facts illustrate the complaint is unfounded, the supervisor will review the circumstances with the next level supervisor in the officer's chain of command.
  - b) If the material facts show the complaint may be valid, the supervisor will counsel with the chain of command, Sergeant or above, for review and decision for process. If the nature of the complaint is such that the outcome may rise beyond the level of a corrective action or employee record card entry, the supervisor will open an administrative investigation via Blue Team.
  - c) Once the chain of command has reviewed a complaint that is deemed either unfounded or valid (but can be remedied by corrective action or an employee record card entry) the supervisor shall open a shift summary via Blue Team.

Shift Summary: A documented summary that is utilized by supervisors to mentor, coach, guide, and or change negative behavior before punitive discipline is necessary OR a documented summary that recognizes an employee's exceptional performance. This should be completed within **THIRTY (30) DAYS FROM THE OCCURRENCE.**

- 2) If a consensus is reached determining the complaint is unfounded after review with the next level supervisor, the supervisor handling the complaint will:
  - a) Contact the complainant, regardless of any digital evidence (BWC or Photographs), and invite them to meet at a Division facility for the purposes of completing a written statement of allegation (if they have not already done so) and viewing any digital recordings.

- (1) If the complainant elects to complete a written statement of allegation (i.e., narrative on Citizen's Complaint form), the statement will be completed prior to reviewing any recording.
  - b) Review available recordings of the incident with the complainant.
  - c) Discuss the recording with the citizen and explain the reason why the complaint is unfounded.
4. Complaint Investigation Assignment
  - a. All Allegations of Misconduct which if founded, may result in an outcome beyond a corrective action or employee record card entry, will be entered into Blue Team as an administrative investigation and reviewed by the Professional Standards Branch Commander prior to assignment.
  - b. The Office of Professional Standards will investigate the following types of complaints and maintain all reports of misconduct that are reported in Blue Team:
    - 1) Violations of the Law which, if charges are brought, could result in jail confinement
    - 2) Excessive / Unreasonable Force.
    - 3) Violation of Constitutional Rights/Biased Based Policing.
    - 4) Harassment of an employee or alleged use of any language or conduct degrading a person's race, religion, lifestyle, sex, sexual orientation, or national origin. These allegations will be received by the Office of Professional Standards and routed to the Office of Human Resources for investigation.
    - 5) Gifts and gratuity violations.
    - 6) Untruthfulness or theft.
    - 7) Any complaint as determined by the Commander of Professional Standards or the Chief of Police.
    - 8) In any case where it is alleged that a member of the Division has committed any of the above and the

complainant or other person is hospitalized as a result of the Division members alleged actions, the Chief of Police will be notified immediately by the on-duty Watch Commander.

Note: All of the above allegations will be entered into Blue Team for an administrative investigation and notification will be made to the Professional Standards Commander so all relevant BWC can be restricted for retention and confidentiality purposes.

- c. The employee's Unit Commander (or designee) will normally review the following types of complaints:
- 1) Matters regarding professional demeanor (rudeness/courtesy).
  - 2) Violations of Rules and Regulations not covered under subsection E.3.b.
  - 3) Violations of Policy and Procedures not covered under subsection E.3.b.
  - 4) Secondary Employment Violations.
  - 5) A Branch Commander may request, because of the complexity of an investigation or other extenuating circumstances, to route a complaint to Internal Affairs for investigation. Internal Affairs may also be requested by a Commander to review particular cases handled at the line level. The OPS Commander will decide when Internal Affairs investigates a violation when possible questions arise as to handling.
  - 6) Any complaint as determined by the Commander of Professional Standards or the Chief of Police.
- d. Digital Media Evidence
- 1) All digital media evidence pertinent to administrative investigations will be submitted via BlueTeam as part of the case file.
    - a) All investigative recordings associated with an administrative investigation shall be categorized as "**PENDING REVIEW**" in Evidence.com for



retention purposes. This will allow an unlimited retention schedule for the video.

5. Investigative Procedure

- a. The Commander of Professional Standards (or designee) will assign Administrative Investigations to the Division Supervisor deemed responsible for completing the investigation.
- b. The investigating supervisor can document the investigation on the Administrative Investigation Format located on the "J" drive under "Internal Affairs".
  - 1) The assigned investigator will:
    - a) Contact the complainant to:
      - (1) Verify the receipt of the complaint.
      - (2) Interview if further information is needed.
      - (3) Advise of the internal investigative process.
    - b) Interview any witnesses, including other officers.
    - c) Gather and review all relevant evidence.
    - d) Notify the employee of the complaint, advising the following:
      - (1) The name of the complainant
      - (2) The date and location of the complaint
      - (3) The nature of the complaint
      - (4) The name and rank of the investigating officer
      - (5) The date, time, and location of the interview
    - e) Question involved Division members during their normally scheduled work hours. Interview sessions will be reasonable in duration and breaks will be provided for personal necessities and rest periods as necessary.
      - (1) When subject of an Administrative Investigation, the investigating supervisor will provide the member with a copy of their administrative rights/responsibilities. The employee may only be questioned after they read and sign the form indicating

understanding of the document in its entirety.

Division members under investigation are required to cooperate fully and answer all questions propounded relating to the incident at hand and, where it is deemed necessary, submit to a polygraph examination. An officer may be disciplined, including termination, for refusing to answer questions or refusing to submit to a polygraph examination when he/she is the subject of an internal investigation.

- (2) During administrative investigations, the employee will not be allowed the presence and/or assistance of counsel during the interview.
- (3) All questioning sessions will be voice and/or video recorded. The employee may, with approval from the Chief of Police and City Attorney, obtain a copy of the transcript of his statement, or a duplicate recording, when the investigation is completed and the statute of limitations on any civil action has run and/or when all pending criminal or civil court action has been concluded.
- (4) Questioning will be limited to the scope of the internal investigation.
- (5) The employee being interviewed will not be subjected to abusive, berating or offensive language / treatment.
- (6) Division members may be required to submit financial disclosure statements if such information is relative to the investigation conducted by the Office of Professional Standards.
- (7) The home address and telephone numbers of the employee under investigation shall not be released to the media without the employee's consent. The employee's

photograph may only be released upon approval of the Chief of Police.

- (8) Criminal interviews of Division members will be conducted separately from any internal investigations. If the member is under arrest, or is likely to be placed under arrest as a result of the interview, they shall be promptly informed of all their Miranda rights prior to the commencement of the interrogation.
- f) Investigate each allegation of misconduct and determine the facts of the incident.
  - g) Complete an investigative summary documenting all elements of the investigation. The case summary will include, but is not limited to:
    - (1) The alleged violations of Division Rules and Regulations.
    - (2) Background information.
    - (3) All statements, interviews, and relevant evidence.
    - (4) Summary of the investigator's findings related to the facts of the investigation.
    - (5) Recommendations pertaining to the alleged Rule and Regulation violations.
  - h) The investigator will forward the investigative summary through their chain of command for review and approval via Blue Team. The approved investigative summary will be forwarded to the Office of Professional Standards.
    - (1) All investigations will be completed within **FORTY-FIVE (45) DAYS OF INITIATION** unless extenuating circumstances exist.
    - (2) The investigating officer may request an extension through the Office of Professional Standards. The request for an extension must document extraordinary circumstances that require additional time for investigation.
    - (3) The Commander of the Office of Professional Standards may grant one

extension for a period of **FIFTEEN (15) DAYS.**

- (4) Any additional extensions must be submitted to the Office of Professional Standards and may only be approved by the Chief of Police.
- (5) The Commander of the Office of Professional Standards will provide regular updates on all current Internal Affairs investigations to the Chief of Police.

6. Disposition of Complaints / Allegations of Misconduct

a. Complaints / Allegations of Misconduct against Division personnel will be adjudicated with one of the following:

- 1) Unfounded: The allegation is false
- 2) Exonerated: The incident reported was investigated and no wrongdoing was found on the part of the member
- 3) Not Sustained: The evidence is insufficient to either prove or disprove the allegation
- 4) Sustained: Allegation is supported by sufficient evidence
- 5) Policy / Training Failure: The allegation is true, and although the action of the employee was consistent with Division policy and/or training, the complainant suffered harm
- 6) Separation from Employment: The employee voluntarily separated from employment with the Division prior to the conclusion of the investigation. This will be documented on a memorandum and approved by the Chief of Police.

b. In the event an investigation identifies the necessity for policy change or development that may prevent future allegations of misconduct, such need shall be reported by the Office of Professional Standards to the Chief of Police with recommendation for the implementation of appropriate corrective action.

7. Review and Approval Process

a. Investigations conducted by Professional Standards Investigators

- 1) The investigator will submit an Investigative Case Summary with the recommended finding(s) for each allegation to the Office of Professional Standards chain of command
  - 2) After the Professional Standards Commander (or designee) approves the Investigative Case Summary it will be sent for Staff review (Chief's Executive Staff and accused employee's chain of command: Lieutenant and Captain). Staff review responses will be sent as "approve" or "reject" with recommendation(s) and/or other comments within **FIVE (5) DAYS OF RECEIPT**.
  - 3) Upon conclusion of Staff Review, the Investigative Case Summary will be submitted to the Chief of Police for review.
- b. Investigations conducted by Unit Level Supervisors
- 1) The investigating supervisor shall submit an Investigative Case Summary with the recommended finding(s) for each allegation to their chain of command.
  - 2) The employee's branch commander will review and forward the approved investigation to the Professional Standards Commander.
  - 3) After the Professional Standards Commander (or designee) approves the Investigative Case Summary, it will be sent for Staff review (Chief's Executive Staff and accused employee's chain of command: Lieutenant and Captain). Staff review responses will be sent as "approve" or "reject" with recommendation(s) and/or other comments within **FIVE (5) DAYS OF RECEIPT**.
  - 4) Upon conclusion of Staff Review, the Investigative Case Summary will be submitted to the Chief of Police for review.

- c. Upon the completion of the Chief of Police's review process, the final approved copy of the investigation will be returned to the Office of Professional Standards.

## 8. Notifications

- a. The Office of Professional Standards will notify the complainant and involved members of the final disposition within **FIFTEEN (15) DAYS OF THE CLOSURE OF THE INVESTIGATION.**
- b. If the investigation is sustained, the Professional Standards Commander (or designee) will send a memo to the corresponding branch commander requesting recommendation(s) for discipline. The recommendation for discipline will be forwarded to the Chief of Police by the Professional Standards Commander for final approval.

## 9. Administrative/Wellness Duty and Leave

- a. The Chief of Police (or designee) may elect to place a Division member who is the subject of an investigation for serious misconduct on administrative duty or administrative leave with or without pay in accordance with Hampton Personnel Policies Manual, Chapter 7, while the investigation is ongoing.
  1. The Chief of Police (or designee) may elect to place a member who is the subject of a traumatic work-related incident on wellness leave for the well-being of said employee.
- b. The Office of Professional Standards will draft a letter advising the employee of their administrative duty or leave status.
- c. The letter will be signed by the Chief of Police (or designee) and served on the employee by a member of the Office of Professional Standards or the employee's unit commander.
  - 1) The served employee will be provided with a copy of the completed letter. The original completed document will be returned to the Office of Professional Standards.

- d. When an employee is placed on Administrative Duty or Leave the following will occur:
  - 1) The serving supervisor shall complete the “Administrative Leave Inventory Checklist” (located under Forms - Miscellaneous on the Intranet).
  - 2) Obtain all equipment from the employee as noted on the Administrative Leave Inventory Checklist at the time of being placed on Administrative Leave.
  - 3) Tag property into Property & Evidence listing all property on the Property Invoice.
  - 4) Return the original Administrative Leave Inventory Checklist and the Property and Evidence Invoice to Professional Standards.
- e. Administrative duties and/or reassignment may be assigned in lieu of administrative leave at the discretion of the Chief of Police.
- f. During any period of administrative duty or leave, the employee or officer shall remain available during normal business hours (0800 – 1600), for official Division needs, including those regarding the investigation, unless otherwise instructed.
- g. An employee/officer on administrative leave will not be permitted to work extra-duty (See P&P 649).
- h. During paid administrative leave or duty, the employee shall suffer no loss of pay, status, or other benefits. Being placed on administrative leave or duty shall not be interpreted as a punitive measure.

#### 10. Tests and Examinations

- a. By order of the Chief of Police (or designee), an employee will be required to submit to medical, laboratory, polygraph, or voice stress examinations, be photographed, participate in a lineup and/or submit a financial disclosure statement at the Division’s

expense when such actions are material to an Internal Affairs investigation. Credit checks may also be conducted at the Division's expense. Failure to comply with such an order will be considered insubordination and result in disciplinary action up to and possibly including termination.

- b. When instruments for the detection of deception are used in any Internal Affairs investigation, the instruments will be used only by trained and certified personnel and in accordance with all applicable federal, state, case law, and administrative decisions.
- c. All such examinations, and all results thereof, will only be conducted or used in a manner that is consistent with applicable federal, state, and case law and administrative decisions.

#### 11. Searches and Inspections of Work Areas

- a. Desks, lockers, storage space, rooms, offices, equipment, information systems, work areas, and police vehicles are the property of the City of Hampton and are subject to administrative inspection at any time with or without cause. They may also be searched to retrieve City property or to discover evidence of work-related misconduct if there is reason to suspect such items are present in the area to be searched.
- b. Since such areas are the property of the City, any employee expectation of privacy in these areas is unreasonable and will not be respected by the Division.
- c. Only those employees who are acting in their official capacity pursuant to official Division business are authorized to search or inspect areas assigned to other employees.

#### 12. Disciplinary Procedures and Appeals

- a. The Division will follow the Disciplinary and Grievance Procedures as outlined in the City of Hampton Personnel Policy Manual and Personnel Administrative Instructions.
- b. The Office of Professional Standards will maintain all grievance files pursuant to City Policy.



