

# LITTLETON POLICE DEPARTMENT

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**POLICY #: 20-3**

**SUBJECT: Citizen Complaints/ Officer Conduct**

**Last Revision Date: July, 2020**

NOTE: This written directive is for the internal governance of the Littleton Police Department, and as provided by RSA 516:36, is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

## **PURPOSE:**

To establish a uniform policy and procedure which relates to complaints against the department or its personnel and, the possible resultant internal investigation. It is the purpose of this policy to improve the quality of service provided by department members. It is also the purpose of this policy to establish a fair and equitable system, by which complaints are received, investigated and evaluated for judgment.

Although this policy generally refers to complaints received from citizens, where and when appropriate, this policy and the procedures outlined herein, shall be understood to include internal investigations or complaints of any allegation(s) of misconduct, whether the source is internal or external to the department.

## **SCOPE:**

This policy applies to all department personnel who, as a result of their assignment, a complaint is received concerning his or her actions or inaction.

## **DISCUSSION:**

### Protection of the Public:

- A. The public has a right to expect efficient, fair and impartial law enforcement, therefore, any misconduct by department personnel must be detected, thoroughly investigated, and properly adjudicated.

### Protection of Department Personnel:

- A. Employees must be protected against false accusations or misconduct. Although being a focus of an investigation may be a very unpleasant or uncomfortable situation, the best protection for an employee who is innocent is a complete, thorough investigation, conducted in a timely manner that clearly and unequivocally supports the employee's honesty, integrity or actions.

**Policy Failure:**

- A. The department is constantly seeking to improve its efficiency and the efficiency of its personnel. Occasionally, personnel investigations uncover faulty procedures that would otherwise go undetected. These procedures can be improved and/or corrected, if properly identified.

**Removal of unfit personnel:**

- A. Personnel who engage in serious acts of misconduct, or who have demonstrated that they are unfit for work, must be removed for the protection of the public, the department personnel and the department.

**POLICY:**

It is the policy of the department to accept and investigate all complaints of personnel misconduct or wrongdoing from any citizen or agency employee. Such complaints will be investigated thoroughly, completely and impartially, following policies and procedures as set fourth in the departments Policy Manual.

**Citizen Complaint Investigation**

1. The citizen complaint investigation component shall come under the direct control of the Chief or his designee, unless said designee is found to be the subject of the investigation, in which instance the Chief will assign someone else. The officer responsible for the internal affairs function has the authority to report directly to the Chief.
2. The primary activities of the complaint/internal investigation function include:
  - a. Properly recording, filing, and controlling the investigation of complaints against the employee.
  - b. Supervising and controlling the investigation of alleged or suspected misconduct within the department.
  - c. Maintaining the confidentiality of the citizen complaint investigation and records.
  - d. Ensuring that the department investigates all complaints against an employee or the agency itself.
  - e. Ensuring that all allegations of misconduct are investigated thoroughly and adjudicated promptly, fairly, impartially.
  - f. Maintaining liaison with the Attorney General's office of the State of New Hampshire, if appropriate, during investigations involving alleged

criminal conduct on the part of any employee and to obtain legal advice or assistance in case preparation.

- g. Each complainant and accused employee shall be individually contacted in person, if appropriate, for the purpose of familiarizing the investigating supervisor with the basis of the alleged complaint.

### **Citizen Complaint Procedures:**

1. When a citizen indicates a desire to file a complaint alleging misconduct by any member of the Department, he/she shall immediately be referred to the Chief of Police or Deputy Chief of Police. This procedure shall also apply when anonymous complaints are received.
2. Except in cases of anonymous complaints, supervisory personnel shall advise the complainant that the investigating officer will contact him/her to discuss the details of the complaint. It is recommended that the complainant be allowed to verbally relate his/her entire version of the incident without interruption after which the investigating officer should ask questions for clarification and detail.
3. In the case of an anonymous complaint, such complaint shall be classified as informal unless a determination is made that the allegation elevates its classification to a formal matter.

### Determination of Informal or Formal Complaint

- A. Employees receiving or observing a complaint or violation shall take such appropriate action as is reasonable and necessary, and shall report such information to the Chief or the most appropriate person within the Chain of Command, given the circumstances involved.
- B. Likewise, a supervisor receiving such information shall take such appropriate action as is reasonable and necessary and forward this information to the Chief of Police or Deputy Chief of Police.
- C. The supervisor initially reviewing an incident of employee misconduct shall, after conferring with the Chief or designee, make a determination as to whether the incident shall be classified as an informal or formal investigation.

### Informal Complaint

1. The investigation shall be classified as informal if the complaint or infraction is:
  - a. not of a serious nature;
  - b. Is not a violation of department rules, regulations, policies or procedures;
  - c. May be resolved by the supervisor to the satisfaction of the complaining citizen.
  - d. Informal complaints may be received orally or in writing.
  - e. Nothing in this policy shall prevent a complaint determined to be so insignificant or frivolous by a supervisor from being resolved without classifying as formal or informal.
  - f. The supervisor shall be responsible for appropriately disposing of the matter.

### Procedures for Informal Complaints

1. If the complaint can be handled in an informal manner, then the following procedures shall be followed by the supervisor accepting the complaint:
  - a. The supervisor shall immediately notify the Deputy Chief of the complaint and his/her intentions to categorize the complaint as informal and will handle the situation on that level.
  - b. The Supervisor will prepare a report to the Deputy Chief using standard reporting procedures.
2. The Chief or his designee will notify the employee immediately or no later than within ten (10) calendar days of receiving knowledge of said complaint. Notice to the employee shall be in writing stating the exact nature of the complaint, date and time of the alleged incident and the name of the individual and/or organization alleging the same.

### Findings of Fact

1. The decision shall be classified as one of the following:
  - a. **Unfounded** - A determination that the charges are false or not factual.
  - b. **Not Sustained** - A determination that the facts presented are insufficient to clearly prove or disprove the allegation.
  - c. **Exonerated, Proper Conduct and Policy** – A determination that the incident occurred, but was justified, lawful and proper.

- d. **Exonerated, Proper Conduct Policy Failure** – A determination that the incident occurred and the actions were in accordance to department policy and procedures; however the policy failed to achieve the desired results.
  - e. **Sustained** - A determination that the allegations are supported by sufficient evidence to justify a reasonable conclusion of guilt or that sustained acts have been discovered that indicate misconduct not based on the original complaint.
2. Notify the officer through the appropriate Chain of Command of the final decision and disposition.

### Formal Complaint

1. The investigation of the complaint or infraction shall be processed in a formal manner as prescribed by this policy in the following instances:
  - a. If the complainant indicates a desire to file a formal written complaint against an employee and it is determined to be proper;
  - b. If the supervisor deems the complaint is of sufficient seriousness to warrant an in-depth investigation;
  - c. If a citizen complaint or other investigation directed at an employee may require the employee to participate in a line-up, submit to a medical or laboratory examination, submit financial disclosure statements, provide photographs for a photographic line-up or submit to a polygraph examination
  - d. Whenever the allegations constitute a violation of law;
  - e. The Chief of Police prescribes that the formal procedures shall be followed.
    - a. The Chief of Police may request that any criminal investigation be conducted by a neutral an detached law enforcement agency.

### Procedures for Formal Complaints

1. In the event that it is determined by the supervisor, through conference with the Chief and/or Deputy Chief, that the complaint shall be investigated in a formal manner, then the following procedures shall apply:
  - a. The Deputy Chief will assign the investigation to an appropriate supervisor for an Internal Affairs Investigation.
  - b. The Deputy Chief or designee will inform the complainant that a member of the department will conduct an investigation into the incident.
  - c. The investigating officer shall make appropriate periodic updates to the Deputy Chief addressing the current status of the investigation. The

- Deputy Chief will ensure the Chief is made aware of the progress with the investigation.
- d. The investigating officer shall forward all information and completed forms concerning the investigation directly to the Deputy Chief in a confidential manner. These documents will then be forwarded to the Chief.
2. The investigating officer responsible for overseeing the investigation shall insure that the following responsibilities have been completed:
- a. The complainant has provided a sworn written statement indicating that any information provided is true and complete to the best of the complainant's knowledge and belief.
  - b. Obtain a detailed and comprehensive statement signed by the complainant on standard statement forms.
  - c. Obtain statements from witnesses on standard statement forms as is applicable.
  - d. Interview the accused employee consistent with this policy as described below.
  - e. Periodically notify the complainant concerning the status of the complaint, and in no case shall the complainant go longer than seven (7) days without being re-contacted after the initial contact.
  - f. Bring the investigation to an expeditious conclusion. No investigation shall exceed 30 days except in extenuating circumstances where the Chief or designee has expressly approved such an extension.
  - g. A final report will be submitted to the Deputy Chief using standard reporting procedures.
3. The narrative of the report shall be submitted in the following format:
- a. Allegation(s) - state as concisely as possible the specific allegations and cite the specific section of the rules and regulations, standard operating procedure, special memorandums and/or the RSA that deals with the allegation. Enumerate the allegations when there is more than one.
  - b. Details of Complaint - show a chronological summary the incident or event.
  - c. Finding of Facts - show by numerical listing a summary of the facts uncovered during the investigation.
  - d. Attachments - number all attached forms, statements, or other supporting documentation.

### Findings of Fact

1. The decision shall be classified as one of the following:

- f. **Unfounded** - A determination that the charges are false or not factual.
- g. **Not Sustained** - A determination that the facts presented are insufficient to clearly prove or disprove the allegation.
- h. **Exonerated, Proper Conduct and Policy** – A determination that the incident occurred, but was justified, lawful and proper.
- i. **Exonerated, Proper Conduct Policy Failure** – A determination that the incident occurred and the actions were in accordance to department policy and procedures; however the policy failed to achieve the desired results.
- j. **Sustained** - A determination that the allegations are supported by sufficient evidence to justify a reasonable conclusion of guilt or that sustained acts have been discovered that indicate misconduct not based on the original complaint.

#### Notification to the Involved Employee(s)

1. The Chief or his designee will notify the employee immediately or no later than within ten (10) calendar days of receiving knowledge of said complaint. Notice to the employee shall be in writing stating the exact nature of the complaint, date and time of the alleged incident and the name of the individual and/or organization alleging the same.
2. The notification shall be discretionary and dependent upon the nature of the allegation which, in some cases may dictate that the notification not be made. When notification is made, it shall be determined whether the employee will receive administrative or constitutional rights.
3. When an employee is advised of his/her administrative rights the employee is required to answer all questions fully and truthfully.
4. Refusal to answer may result in dismissal. When the employee is compelled to answer questions under threat of adverse administrative action, then the investigating officer shall realize that any confessions made by the employee shall not used against him in any subsequent criminal proceeding. The admissions can, however, form the basis of administrative disciplinary action (Gardner v. Broderick 392 U.S. 273), (Garrity v. New Jersey, 1967).
5. In cases that are administrative in scope and the employee's administrative rights have been provided to him/her, the employee under investigation shall not be advised of any constitutional rights.

6. In cases where the Chief desires to have the option of using any statements made by the officer in a subsequent criminal proceeding, and after consultation with the Attorney General's Office then:
  - a. The employee shall be advised of his right to remain silent; his right to discontinue answering any question, and warned that anything said may be used against him in a court of law.
  - b. The employee shall be specifically advised that no adverse disciplinary or administrative action will be taken against him based upon his refusal to answer any questions.
  - c. Any further administrative investigation will cease pending the completion of any criminal investigation conducted by the Attorney General's Office.
7. The employee being investigated shall not become involved in the investigation in any manner, unless expressly requested to do so by the Chief.
8. Upon completion of the investigation, the officer in charge of the investigation shall forward a report of the investigation to the Chief along with his recommended action in the format described above. This will include all forms and attachments as previously described herein.
9. If the investigation has yielded sufficient evidence, conclusive recommendations shall state:
  - a. Corrective Action.
  - b. Disciplinary Action by the Chief.
10. The Chief or designee shall review the report package in its entirety, as well as the recommended decision and disposition of the complaint. If all is in order the Chief or designee shall:
  - a. Notify the employee, and the appropriate supervisor of the final decision and disposition. This notification shall be either through a memorandum or other written form.
  - b. Notify the complainant of the decision and disposition of the investigation in writing.
11. The Chief of Police may reprimand the employee or may, with the concurrence of the Town Manager, take the following action against the Employee:
  - a. Verbal Warning
  - b. Written Warning
  - c. Suspension without pay,
  - d. or Dismissal.



12. The original investigative report package shall be placed in department administrative records. The disposition or finding of any investigation will be placed in the employees personnel file if disciplinary action was required. No record of a citizen complaint or other internal investigation shall be maintained in central records.

### Records and Reporting

1. Internal Investigations and Citizen Complaints that have been deemed Unfounded, Exonerated for any reason, or Not Substantiated will be maintained for five (5) years, after which they may be archived.
2. Internal Investigations and Citizen Complaints which are sustained will be:
  - a. Sealed and forwarded to the Chief of Police
  - b. Achieved in a secured records area
  - c. A Letter of finding will be placed in the Employee's Personnel File

### Dismissal Procedures

1. If employee misconduct results in dismissal, Human Resources will provide the following information to the employee:
  - a. A written statement citing the reason for dismissal;
  - b. The effective date of the dismissal; and
  - c. A statement of the status of fringe and retirement benefits after dismissal

### Special Investigative Procedures

1. An employee may be required to provide certain information, or to submit to testing or examination in the course of an investigation.
2. Such procedures shall be:
  - a. Conducted only with the express authorization of the Chief or Deputy Chief.
  - b. Specifically directed toward and closely related to the particular investigation.
3. If the employee refuses an instruction to submit to testing or examination or other requirements of this section, the Chief or his designee may order the employee orally or in writing to comply; punitive disciplinary action, including dismissal, may be taken upon an employee's refusal.

4. Examples of specific requirements that can be made of employee during an investigation include, but are not limited to the following procedures:
  - a. A polygraph examination: The result of a polygraph examination will generally not be admissible in a court of law; however, it will be admissible in subsequent administrative or disciplinary hearing.
  - b. Medical, psychiatric, or laboratory examinations: Some laboratory results may not be admissible in a subsequent criminal proceeding if the employee was ordered to submit to the test upon threat or implied threat of adverse administrative action.
  - c. Photographs: An employee may be required to submit to photographs of a type and format as dictated by the Chief, for the purpose of establishing a photographic line-up or for other investigative purpose.
  - d. Financial disclosure: Submission of financial disclosure or other personal papers: The Chief may require an employee to turn over such personal papers if related to an active investigation. However, if criminal proceedings are a possibility at a future date, and the use of such papers may be required, then the papers should be seized in a manner consistent with normal criminal investigative procedure (i.e. search warrant, consent, etc.).
  - e. Use of Investigation Reports: All records, reports, letters, memoranda, and other documents relating to any internal investigation into the conduct of any employee of the department shall not be admissible in any civil action other than in disciplinary action between the department and the employee (RSA 516:36).
5. Records pertaining to internal investigations shall not be released to anyone outside the department without the expressed written consent of the Chief.

#### Policy Failure

1. When adjudicating a complaint, it may be found that a citizen has a valid and justifiable grievance, but that the particular employee involved acted properly within the prescribed policy.
2. In such cases, the investigating officer shall recommend the appropriate decision as it relates to the officer (i.e. Exonerated, Policy Failure.), and prepare an additional and separate section to his narrative report entitled "Policy Failure."
3. Policy failure reports will not be released to the complainant and will be used for internal purposes only.

4. The investigating officers' report shall identify:
  - a. The specific policy involved.
  - b. The harm done to the complainant or the problem that it caused.
  - c. Any recommended changes to the existing policy to prevent further problems of the same nature in the future.
  
5. If the Chief concurs with the investigating officer's conclusions regarding the policy failure, then he shall notify the Deputy Chief who is responsible for preparing the appropriate policy change.

Complaint Registering Procedures

1. Information on procedures to be followed in registering complaints against the police department or its employees shall be disseminated to the public upon request.

**Issued:**  
7/10/2020

**Authorized By:**  
Chief Paul Smith

**Effective:**  
7/10/2020

**Distribution:**  
All

**Reviewed:**

**Revised:**