

invalid. A person who gives consent to search may give partial consent (limiting the scope of the search) and may revoke their consent at any time, in which case the search must cease but any evidence discovered and seized prior to the revocation of consent may be retained by the police. Oral consent to search is valid, but wherever possible, officers shall seek written consent on a standard departmental form.

XIII. OPEN FIELDS:

Generally, no warrant is required to search open fields outside the curtilage of a residence, even if the property is posted against trespassing; however, a warrant may be advisable before seizing any evidence discovered.

XIV. CRIME SCENE:

In most incidences where an officer has to conduct a search of a crime scene there will not be an issue as to whether or not the officer will have permission to conduct the search. In most cases the police will have been called to the scene by a victim who has the authority and will allow the investigating officers to have unlimited access. In all cases after the original search for victims or suspects, the officer should obtain express permission from the owner of the property to further search for evidence or process the scene. This permission shall be documented in a police report or in more serious cases a Consent Search Form should be completed.

There will be some situations that will arise where the investigating officer may need to take additional steps in order to legally gain access to a crime scene. In such cases the shift supervisor shall be notified and a determination will be made if a search warrant is required.

CITIZEN COMPLAINT POLICY/INTERNAL AFFAIRS

In Effect: 08/01/2020

Review Date: 09/01/2022

80.1 CITIZEN COMPLAINT POLICY / INTERNAL AFFAIRS

I. PURPOSE:

The purpose of this policy is to establish uniform procedures for addressing complaints of misconduct by police department personnel. These procedures will govern the investigation and resolution of complaints that are brought to the attention of the department. The procedures are designed to ensure that the integrity of the department is maintained through an internal system whereby objectivity, fairness, and justice are ensured by an impartial investigation and review. An additional purpose of this policy is to ensure that complaint information is compiled, tracked, analyzed, and made available to the Chief of Police for use in managing the department.

II. POLICY:

It is the policy of this department to investigate all complaints of alleged officer misconduct, and to equitably determine whether the allegations are founded or unfounded and to take appropriate action.

III. CONFIDENTIALITY OF INVESTIGATIONS:

Internal affairs investigations are conducted for the internal use of the Berlin Police Department. These investigations are to be kept confidential in accordance with State law. The Department reserves the right, however, to provide information regarding Investigation to the Department's legal counsel or the appropriate prosecutorial authority, if warranted. All other releases of internal affairs information will be done only upon court order, in keeping with collective bargaining agreements, or with the employee's and department's consent.

IV. DEFINITIONS:

A. COMPLAINT:

Any clear, specific and articulate allegation of employee misconduct which, if true, would constitute a violation of law or the policies and procedures of the Berlin Police Department.

B. INTERNAL AFFAIRS INVESTIGATOR:

The Deputy Chief or his/her designee will be assigned to investigate or supervise the investigation of all complaints against sworn and civilian personnel. All complaints will be reviewed by the Deputy Chief. The Deputy Chief reports directly to the Chief of Police.

V. TYPES OF INVESTIGATIONS:

All complaints of employee misconduct received by this Department shall be documented and investigated either formally or informally. A receipt letter shall be sent to the complainant verifying the complaint is being investigated. Investigations shall begin within a reasonable time, or within five days, after the incident occurred/reported in order to effectively and efficiently address any issues raised in the incident, preserve evidence related to incident, and memorialize witness accounts. Investigations shall be completed within 45 days unless extended by the Chief of Police.

A. FORMAL INVESTIGATIONS:

A Berlin Police Department Commendation/Complaint Form must be completed if a complaint is to be investigated. Formal Investigations shall be investigated by an Internal Affairs Investigator or his designee. Formal investigations include, but are not limited to:

1. Citizen-alleged violations of departmental rules, regulations or procedures. Excessive force complaints, gross misconduct complaints.
2. Citizen-alleged violations of local, state or federal laws.
3. Employee-alleged violations of departmental rules, regulations or procedures.
4. Employee-alleged violations of local, state or federal laws.
5. Anonymous complaints or complaints received via mail or telephone may serve as the basis for filing of a BPD Complaint Form and serve as the basis for the resulting formal investigation if the allegations are of a serious nature. All other complaints of this nature will be investigated informally, if possible. An identifiable complainant will always be encouraged to appear in person to meet with a shift commander or designee. All

complaints shall be documented and investigated whether received in person, by mail or by telephone.

6. A formal investigation must be initiated if any of the following criteria is met:

- a. Any supervisory officer deems a complaint sufficiently serious as to justify a formal investigation.
- b. The complaint alleges any criminal conduct or serious violation of the departmental rules, regulations or procedures.
- c. The alleged conduct, while not a serious violation of departmental rules, regulations and procedures, begins to show pattern or repeated misconduct.
- d. The complaint alleges excessive force, corruption, or violation of civil rights.

7. Whenever an officer receives a formal complaint, as specified above, he shall notify the Deputy Chief, if he is unavailable he shall notify the Chief of Police. The Chief of Police will be immediately notified of any complaint against an officer alleging any criminal activity or excessive use of force.

8. The internal affairs investigator has discretion to return a formal complaint form to the appropriate shift supervisor for informal investigation and resolution of a formal investigation is not warranted.

B. INFORMAL INVESTIGATIONS:

1. Not all investigation of complaints need to be handled in a formal manner. A minor complaint or situation may only require an informal investigation and may properly be resolved by a supervisor (Sergeant, Lieutenant) as a routine part of supervision. Examples of the types of complaints investigated informally include but are not limited to: rudeness, tardiness, minor traffic complaints of the operation of a police vehicle, etc.

2. Documentation of informal complaints is necessary, therefore, a BPD commendation/ complaint form will be completed for all complaints that are investigated informally. The following criteria should be met for a complaint to be investigated informally:

- a. The superior officer can resolve the issue to the complainant's satisfaction.
- b. The complainant views the alleged offense as not being serious in nature and consequence.
- c. The allegation does not constitute criminal conduct.
- d. The allegation is not a serious violation of departmental rules, regulations or policy and does not indicate a pattern of repeated misconduct.

3. In all cases where a complaint is investigated informally, it can be changed to a formal investigation at any point in the investigation of any if the following is met:

- a. The initial investigator discovers information that indicates the complaint meets the criteria for a formal investigation.
- b. The alleged conduct is not a serious violation of departmental rules, regulations and procedures, but shows a pattern of repeated misconduct.
- c. The Chief of Police, Deputy Chief, or their designee determines that a formal investigation is in order.

VI. SHIFT SUPERVISOR DUTIES:

A. It is the responsibility of the on-duty shift supervisor to meet with citizens regarding the allegations of employee misconduct. The shift supervisor shall interview the complainant and make an initial determination whether to proceed with a formal or informal investigation based upon the criteria outlined in the previous section.

B. If the complainant is an employee, the shift supervisor shall obtain a written statement from the employee and then, as soon as practicably possible, advise the Deputy Chief and Chief of Police of the incident.

C. If the complainant's attitude or demeanor is inappropriate (i.e. irrational, intoxicated, hostile) the shift supervisor shall document the complaint and consider making an appointment for the complainant to return at a later time for a follow-up interview.

D. In any case, the shift supervisor should attempt to identify all potential witnesses and secure any evidence related to the incident.

E. If the decision has been made to proceed with a formal investigation, the formal investigation will be initiated by the completion of the BPD commendation/ complaint form. The shift supervisor will follow the procedure as detailed below:

1. Prior to taking a statement from the complainant, read the citizen complaint oath/affirmation form (see addendum #2) to the complainant and have the complainant date and sign the form. The form shall then be witnessed and signed by the shift supervisor.

2. Take a written statement from the complainant regarding the circumstances of the alleged incident.

3. Have the complainant review and sign the statement. If the complainant refuses to sign the statement, make note of this on the complaint form. Advise the complainant the refusal to sign the statement shall be considered by the internal affairs investigator and command staff in evaluating the truthfulness of the complaint.

4. The shift supervisor shall verbally inform the employee of the complaint. The employee will be asked to explain his/her version of the circumstances involving the complaint. If the complaint involves a situation where an officer is required to complete a police report (Arrest, Incident, Accident, etc.) the officer shall complete the report prior to the end of his/her tour of duty.

D. The shift supervisor shall complete the initial complaint form and submit the form, statement and oath/affirmation to the operations commander either in hand or by a sealed envelope. The Deputy Chief will then notify the Chief of Police of the complaint.

E. If, after discussion of the complaint with the complainant, the shift supervisor decides to proceed with an informal investigation the following procedure will be followed:

1. Complete the top part of the BPD commendation/complaint form.

2. Briefly record the nature and details of the complaint.

3. The employee shall be advised of the complaint and its subsequent conclusions in writing.

4. Informally investigate the complaint or assign the investigation to a supervisor.

5. If the complaint involves an officer not on the particular shift supervisor's shift, the complaint shall be forwarded to the appropriate shift supervisor.

6. Informally resolve the complaint and document the information concerning the resolution.

VII. RESPONSIBILITIES OF THE INTERNAL AFFAIRS INVESTIGATOR:

A. Supervise and control any formal investigation assigned to him with the authority to report directly to the Chief of Police.

B. Notify in writing, as soon as possible, all members who are subject to a formal investigation and provide them with a copy of rights and duties.

C. If the incident is determined to be a violation of law, the investigator shall consult with, and get approval from the Chief of Police to make final determination to refer the matter to an independent agency that investigates violations of law. The internal investigation need not be complete for this to occur. The criminal and internal investigations can run separately and simultaneously.

D. Identify all potential witnesses and secure any evidence related to the incident. In reference to evidence, if an employee's personally owned items are to be seized, (ex. cell phones, other electronic devices, etc...), the investigator shall notify the Chief of Police of such intent. See Evidence Policy 45.3 for further information on proper collection of evidence.

E. If a determination has been made of potential abuse or neglect, the investigator shall notify other State agencies of the incident, within a reasonable amount of time and within State regulated timelines. This will ensure that independent agencies have time to complete their own investigations and provide any protective or other services it deems appropriate.

F. Update the Chief of Police periodically to the status of the investigation and any significant developments.

G. Submit for command review, at the conclusion of the investigation, a summary of the facts of the investigation, any noted violations of departmental rules, regulations and procedures. This could explain any deficiency with the policy or training needs to be addressed.

H. Periodically notify the complainant of the status of the investigation (at least weekly) and when the investigation is concluded. If the subject is an Adult/Elderly person (as defined by statute), the department shall comply with the terms of RSA 21-M:8-k and keep the individual with mental illness or his/her guardian apprised about the investigation.

VIII. EMPLOYEES DUTIES AND RIGHTS DURING A FORMAL INVESTIGATION:

A. The employee's duties and rights contained in this section shall be applicable to any formal investigation. However, a supervisor should afford an employee all the applicable rights under this section whenever the supervisor reasonably believes that an employee's conduct may result in either a criminal investigation or the filing of a formal investigation. The failure of the supervisor to afford an employee these rights does not entitle the employee to disobey the orders of a supervisor. The supervisor's failure to allow an employee to exercise these rights will be considered by the Chief of Police prior to imposition of any discipline against the employee.

B. After receipt of the formal investigation form, the internal affairs investigator shall advise the employee, in some confidential manner, that a complaint has been made and that an investigation will be conducted. The

internal affairs investigator will provide a written notice to any member who is the subject of a formal investigation. The notice will include the name of the complainant, the nature of the allegations, and copies of the employee's rights and duties. In addition, the employee will normally be afforded the opportunity to read the initial complaint form. If the disclosure of the existence of the complaint or the identity of the complainant would impede the investigation, the Chief of Police shall decide all questions concerning employee notification and employee access to complaint information.

C. SCOPE OF QUESTIONING DURING INTERVIEW:

1. An employee will be given the opportunity for a voluntary interview in all cases. If the employee declines and if the matter involves potential criminal conduct then the employee will be read and provided a copy of the Garrity Warning. If a compelled interview is conducted employees will be guaranteed all the rights afforded by the Garrity Warning. (See Addendum #5).
2. The internal affairs interview will be limited to questions which are specifically, directly and narrowly related to the employee's duties or fitness for duty. An employee may be questioned about off-duty conduct if there is sufficient relationship between the employee's off-duty conduct and the employee's official duties. Statements made by the employee during the interview will not be used against the employee in a criminal proceeding. However, a matter may be referred for further investigation by a criminal investigator if the Chief of Police deems it appropriate.
3. Employees may request to have a union representative present and available for consultation during any internal affairs interview. That representative is not entitled to interfere with the conduct of the interview. An employee shall be entitled to submit a statement in writing to the Chief of Police in addition to the employee's taped interview. The internal affairs investigator may request that an employee submit a written statement in lieu of or in addition to the employee's taped interview.

D. RIGHTS AND DUTIES DURING AN INTERNAL INVESTIGATION:

1. All interviews will be conducted at a time mutually agreeable to the employee and the interviewer unless the seriousness of the investigation is such that an immediate interview is required. Every attempt will be made to conduct the interview within thirty days.
2. The interview will be held in the internal affairs office or at location agreeable to both parties.
3. During interviews conducted by more than one internal affairs investigator, there will be one designated interviewer; only the interviewer will ask questions of the employee.
4. Employees under investigation shall not use or be subject to offensive language, nor threatened with transfer, dismissal, or disciplinary action during an interview. No promise or reward shall be made by the internal affairs investigator as an inducement to answer questions.
5. At the discretion of the Internal Affairs Investigator and with the employees permission, interviews will be taped. If the interview is taped, a transcript shall be completed.
6. An employee or the employee's representative may contact the internal affairs investigator to ascertain the status of the investigation of a complaint filed against the employee.
7. Prior to any hearing with the Chief of Police concerning possible disciplinary action, an employee will be allowed access to all information and or documents upon which the contemplated discipline is based, unless in the judgment of the Chief of Police, circumstances warrant anonymity.

8. An employee will be given the opportunity to explain his actions to the Chief of Police or Deputy Chief prior to the imposition of any disciplinary action.

9. Employees will only be asked to submit to a polygraph examination if the examination is material to a current formal internal affairs investigation and only upon individual written authorization from the Chief of Police.

10. Employees may be asked to submit to drug testing if the examination is material to a current formal internal affairs investigation.

11. Employees may be asked to provide a financial disclosure statement if it is material to a current formal internal affairs investigation.

12. Photographs will be taken of all employees. Employees may be directed to participate in a line-up for identification purposes.

IX. COMMAND REVIEW:

A. At the conclusion of a formal investigation for a sworn officer, the file may be reviewed by the following personnel for the purposes of noting in writing recommendations, if any, for disciplinary or other action.

1. Patrol/detective commander (of investigated officer).
2. Deputy Chief.
3. Chief of Police.

B. At the conclusion of a formal investigation for a non-sworn employee, the file may be reviewed by the following personnel for the purposes of noting in writing a recommendation, if any, for disciplinary or other action.

1. Civilian Manager Information Services.
2. Deputy Chief.
3. Chief of Police.

X. ACTION BY THE CHIEF OF POLICE:

A. The Chief of Police shall review the report and supporting documents and shall give final approval to the disposition of the case as follows.

1. **SUSTAINED** – this means that there is sufficient evidence to prove that an employee's conduct resulted in a violation of department rules, regulations and procedures or local, state or federal law.
2. **NOT SUSTAINED** – this means that the investigation failed to either prove or disprove the allegation.
3. **UNFOUNDED** – this means that the investigation indicated by a preponderance of the evidence, that the alleged act did not occur.
4. **EXONERATED** – this means that the alleged act did occur, but it was justified, legal, and proper under the circumstances.

B. The Chief of Police shall make the final decision as to the imposition of any disciplinary or corrective action. The action may include, but is not limited to:

1. Counseling.
2. Guidance.
3. Warning.
4. Reprimand.
 - a. Suspension.
 - b. Demotion of rank.
 - c. Dismissal.

C. **APPEALS** - an employee may appeal any decision as outlined in state law and collective bargaining agreements.

XI. SEXUAL HARASSMENT COMPLAINTS:

The investigation of sexual harassment of a department employee by another employee shall be handled in accordance with the provisions of this policy. The investigation shall follow the guidelines established in this policy.

XII. REPORTING/RECORD KEEPING:

The Chief of Police shall prepare an annual summary of all citizen complaints received. The report shall include the number of complaints received and the investigative findings of the complaints. The Chief of Police shall cause the internal investigation reports to be secured in a separate location which is independent of personnel files.

XIII. PUBLIC COMMENT ON ADMINISTRATIVE INVESTIGATIONS:

For legal, contractual and policy reasons, public comment on administrative investigations shall be limited to the Chief of Police or his designee. Inquiries from the news media or public shall be referred to the Chief of Police. The items of information released will be in accordance with applicable state and federal law.

Addendum 80.1, #1

BERLIN POLICE DEPARTMENT

COMMENDATION/COMPLAINT FORM

___ Commendation Received: Date/Time Action Taken: Report# :

Reported:

___ Allegation of ___ Telephone ___ Sustained

___ Misconduct ___ In Person By _____ ___ Not Sustained

___ Inquire ___ Other _____ ___ Exonerated

___ Unfounded

Complainant's Name: _____ Address: _____

City/State: _____ Home Phone _____ Business

Phone: _____

Location of Incident: _____

Date/Time of Incident: _____

Employee(s) Name(s)

(1) _____ (3) _____

(2) _____ (4) _____

Witness or Other Complainants:

(1) Name: _____ Address: _____

Phone: _____

(2) Name: _____ Address: _____

Phone: _____

(3) Name: _____ Address: _____

Phone: _____

DETAILS OF COMPLAINT/RECOMMENDATION FOR COMMENDATION

Supervisor Taking Report:

Addendum 80.1, #2

BERLIN POLICE DEPARTMENT

CITIZEN COMPLAINT OATH/AFFIRMATION

CC # _____

I, _____, do hereby swear/affirm that the foregoing information provided by me is a true and complete account to the best of my knowledge and belief.

I, _____, understand that any deliberately false, misleading or untrue statements, accusations or allegations made by me, orally or in writing, to any person involved in this complaint investigation, may cause me to become subject to criminal and/or civil prosecution.

I, _____, realize that, because of my complaint or allegation, it may become necessary for me to meet with an investigator of the Berlin Police Department for additional interview or discussion relative to my complaint or allegation. I acknowledge that the accused member may be present during the interview or discussion and that the member's presence will be at the discretion of the Berlin Police Department.

I, _____, realize that the investigation into my complaint or allegation may result in a criminal/administrative hearing. I am aware that, as a result of my complaint, I may be required to testify at a criminal/administrative hearing. I hereby agree to cooperate in the investigation into my complaint or allegation and further agree to testify at any hearing necessary to adjudicate the matter stemming from my complaint.

Dated at _____ this _____ day of _____.

Signature _____

Witness _____

Witness _____

Personally appeared the above named complainant and made oath/affirmation that the complaint subscribed is in his/her belief true.

Justice of the Peace _____

Date: _____

Addendum 80.1, #3

BERLIN POLICE DEPARTMENT -- ACKNOWLEDGEMENT OF RECEIPT OF COMPLAINT

Date:

Name

Address

Dear

This is to acknowledge receipt of your complaint on _____,
against _____ of the Berlin Police Department.

Your complaint is currently being investigated by _____ who is assigned to the
Patrol Division to determine if _____ actions were in violation of
departmental policies and procedures.

Upon completion of the investigation you will be notified of the finding in this matter.

Should you have additional information concerning this matter or any questions please call me at (603)
752-8555.

Sincerely,

Peter P. Morency

Chief of Police

CC: File

Addendum 80.1, #4

Date:

Name

Address

Dear:

I would like to take this opportunity to offer my sincere apology for the manner in which your call for assistance was handled on _____.

As I had indicated to you on the phone, we have reviewed the tape recording of your conversation with the dispatcher and have spoken with the officer who responded to your call, and found that we failed to assist you in the appropriate manner. The department has spoken to the dispatcher and the officer and they have been counseled to prevent this from happening again.

The Berlin Police Department strives for quality service and you have every right to expect the very best.

Thank you for bringing this matter to my attention. If you should have any questions, feel free to call me at (603) 752-8555.

Sincerely,

Peter P. Morency

Chief of Police

CC: File

Addendum 80.1, #5

BERLIN POLICE DEPARTMENT

GARRITY WARNING

At this time I am going to question you about _____

This questioning concerns administrative matters relating to the official business of the Berlin Police Department. I am not questioning you for the purpose of instituting a criminal prosecution against you. During the course of this questioning, even if you do disclose information which indicates that you may be guilty of criminal conduct, neither your self-incriminating statements nor the fruits of any self-incriminating statements you make will be used against you in any criminal legal proceedings.

Since this is an administrative matter and any self-incriminating information you may disclose will not be used against you in a court of law, you are required to answer my questions fully and truthfully. This requirement is set forth in our Police Department Rules and Regulations, Chapter 20.1, Prohibited Conduct and Required Conduct, and our departmental regulations requiring employees of this department to comply with all lawful orders.

If you refuse to answer my questions, this in itself is a violation of the rules and procedures of the department and you will be subject to disciplinary action.

Do you understand what I have just explained to you? _____

Do you have any questions concerning what I have just explained to you? _____

I, _____, by my signature below, affirm that I have been advised of the "Garrity Warning" and have had its meaning explained to me.

Officers Signature Date