

WOLFEBORO POLICE DEPARTMENT

SOP 2.5

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[Note: This written directive is for the internal governance of the Wolfeboro 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.]

**By Order of:
Stuart Chase, Chief of Police**

CITIZEN COMPLAINTS AND INTERNAL INVESTIGATIONS

PURPOSE

The purpose of this policy is to provide all Wolfeboro Police Department (“Wolfeboro” or “Department”) employees, and the public, the procedures for processing and investigating allegations of officer misconduct or citizen complaints.

POLICY:

The Wolfeboro Police Department’s public image is determined by a professional response to allegations of misconduct against its employees. The establishment of procedures for the investigation of complaints is crucial to demonstrate and protect the Department’s integrity. This Department shall accept and fairly and impartially investigate all complaints or allegations of misconduct to determine their validity, and to timely impose any disciplinary or non-disciplinary corrective actions that may be warranted. It is the Department’s policy to investigate every instance of alleged misconduct against a member of this Department, whether criminal or administrative in nature, in accordance with federal or local laws, and Department policies and procedures. The Executive Officer (Captain) is responsible for the overall administration of the investigations of citizen complaints and employee misconduct.

The Office of the Chief shall be responsible for the investigation of all allegations of serious misconduct and serious use of force incidents pursuant to Department policies and procedures. The Chief (or his Designee) will have the authority to utilize resources outside the department to conduct investigations including retaining outside investigators.

DEFINITIONS

Complaint: Any allegation by an individual regarding Wolfeboro Police Department services, policies, practices or procedures, claims for damages which allege officer misconduct, or officer misconduct; and any allegation of possible misconduct made by a Wolfeboro police officer.

Complainant: Any person who files a complaint regarding the conduct of any Department employee, or the Wolfeboro Police Department's policies, procedures, or action.

Complaint Control Number: A sequential number used to identify and track citizen complaint investigations.

Class 1 Complaints: Serious allegations, including alleged criminal conduct that has the potential to damage the reputation of the Department or its personnel.

Class 2 Complaints: Less serious allegations that warrant an investigation, but do not rise to the level of a more serious complaint.

Class 3 Complaints: Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.

Class 4 Complaints: Minor Service complaints by a citizen who contacts the Department questioning, or informally complaining, about a policy, procedure, or tactic used by the Department or an employee.

Critical Firearm Discharge: A discharge of a firearm by a Wolfeboro officer, but does not include range and training discharges and discharges at animals.

Counseling: Information relayed to an employee by a ranking officer or training officer, in which the information relayed points out strengths, weaknesses, or training needs, or offers the employee the opportunity to improve performance. Counseling is not disciplinary by itself, but may progressively lead to discipline.

Discipline: A written reprimand, suspension, demotion, or dismissal.

Employee: Any person employed by the Wolfeboro Police Department, whether sworn or non-sworn, part-time or full-time.

External Complaint: A complaint that originates from outside the department.

Internal Complaint: A complaint that originates from within the Department. Such complaints may be initiated by other Wolfeboro police employees or from supervisors who observed, or were informed by other employees, of possible policy violations.

Professional Standards: The designated Division with primary responsibility for conducting investigations of Administrative or Citizen Complaints of Misconduct.

Misconduct: Any conduct by a Wolfeboro Police employee that violates Department policy or the law. When made applicable to the requirement to report officers' misconduct, pursuant to NH RSA 105:19, I, "misconduct" means assault, sexual assault, bribery, fraud, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and illegal use of force as defined by the New Hampshire criminal code.

Officers: Any law enforcement officer employed by or assigned to the Wolfeboro Police Department, whether on or off duty, including supervisors and members authorized to carry department issued weapons.

Preponderance of the Evidence Standard: The quantum of evidence that constitutes preponderance cannot be reduced to a simple formula. A preponderance of evidence has been described as just enough evidence, no matter how slight, to make it more likely than not that the allegation sought to be proved is true or false.

Serious Misconduct: Suspected criminal misconduct and the specific forms of misconduct identified below in Section IV.D. Such conduct shall be investigated by the Professional Standards Division and the Criminal Investigation Division of the Attorney General's Office.

Serious Use of Force: Any action by an officer that involves: 1) the use of deadly force, including all critical firearm discharges; 2) a use of force in which the person suffers serious bodily injury, or requires hospital admission; 3) a canine bite; and 4) the use of chemical spray or Electronic Control Weapon against a restrained person.

Summary Action: Disciplinary action (oral reprimand or counseling documented in writing) taken by an officer's supervisor or commander for minor violations of department rules, policies, or procedures as defined by this department. Summary actions are the lowest level of disciplinary action generally handled by first line supervisors.

Supervisor: Includes those holding the rank of Sergeant, or anyone acting in those capacities, any other sworn or non-sworn manager authorized to carry department issued weapon(s), or any other individual authorized by the Chief.

Use of Force Incidents Indicating Potential Criminal Liability: Includes, but is not limited to, all strikes, blow, kicks, or other similar uses of force against a handcuffed subject, and all accusations or complaints of excessive force.

PROCEDURE:

A. Investigations of Citizens Complaints

1. Receipt of Complaints

- a. When a citizen indicates a desire to file a complaint alleging misconduct of a police officer or other member of the Police Department, he/she shall be referred to the Executive Officer (Captain)
 - b. This procedure shall also apply when anonymous complaints are received. It is recommended that the complainant be allowed to verbally relate his/her entire version of the incident without interruption, after which the interviewer should ask questions for clarification and detail.
 - c. A supervisor will attempt to resolve the complaint immediately during the receiving stage if it's non-serious. Oftentimes, a courteous explanation by a police representative will resolve the complaint to the citizen's satisfaction. If it is handled in this manner, a memorandum to the Captain/Executive Officer will be completed along with a complaint investigation face sheet, explaining the nature of the complaint and the resolution reached. The Captain will review these memorandums, assign an internal investigation number, and maintain them in the internal investigation file. The Captain will review the memorandum to determine if they agree with the issue being handled in this manner and note his opinion on the memorandum. He/she may return the complaint for further information or a formal or informal internal investigation if he determines its need with the Chief of Police's recommendation. This memorandum will be completed prior to the end of the supervisor's shift unless otherwise authorized. In matters where the Captain/Executive Officer receives the complaint, the memorandums will be reviewed by the Chief of Police, assigned an internal investigation number, and maintained in the internal investigation file. The Chief of Police will review the memorandum to determine if they agree with the issue being handled in this manner and note his opinion on the memorandum. He/she may return the complaint for further information, or a formal or informal internal investigation if he/she determines its need. This memorandum will be completed prior to the end of the shift unless otherwise authorized.
 - d. In the case of an informal or formal complaint, the respective Supervisor who receives it will forward a memo outlining the basic complaint to the Captain for indexing. The memo should contain an initial assessment as to whether it is a formal or informal complaint, or how to resolve it. This shall be completed following the interview and prior to the end of shift. In cases where the Captain or his designee handles the informal or formal complaint, the memo outlining the basic complaint will be forwarded to the Chief of Police.
2. All investigations shall, to the extent reasonably possible, determine whether the officer's conduct was justified. No investigation being conducted by the Office of the Chief shall be closed simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury;

3. All investigations shall be conducted by a supervisor who did not authorize, witness, or participate in the incident, and all investigations shall contain:
 - 1.) Documentation of the name and badge number of all officers involved in, or on the scene during, the incident, and a canvass of the scene to identify civilian witnesses;
 - 2.) Thorough and complete interviews of all witnesses, subject to the Wolfeboro Police Department's *Garrity* Protocol, and an effort to resolve material inconsistencies between witness statements;
 - 3.) Photographs of the subject(s) and officer(s) injuries or alleged injuries; and
 - 4.) Documentation of any medical care provided.

B. Reports of Misconduct by Law Enforcement Officers

- 1.) It shall be the duty of any Wolfeboro Police Officer who observes misconduct by any another law enforcement officer to notify the Wolfeboro Police Chief in writing immediately or as soon as is practicable after observing such misconduct.
- 2.) Within 7 days of receiving such notification, the chief law enforcement officer shall notify the police standards and training council of such misconduct in writing. If the chief law enforcement officer is the subject of the misconduct report, the reporting officer shall report directly to the police standards and training council.

C. Law Enforcement Conduct Review Committee

1. Upon receipt of the Complaint Form, the complaint will be reviewed and classified in its proper category for assignment. Categories are identified in section C below.
2. The investigating Supervisor shall evaluate complaints of criminal conduct made against Wolfeboro Police Department employees, and report findings to the Chief. The Chief will authorize transfer of the criminal allegation investigation to the Law Enforcement Conduct Review Committee, pursuant to NH RSA 106-L.
3. The Committee shall review all valid complaints alleging misconduct and, if determined necessary, shall:
 - a.) Cause or direct an investigation of the alleged misconduct to be conducted by the law enforcement agency that employs the subject officer;
 - b.) Confirm that any investigation by a law enforcement agency was valid;
 - c.) Review the record and findings of an investigation by a law enforcement agency and, if the investigation was not valid;
 - d.) Authorize the staff attorney to direct the complaint to be investigated with assistance from investigators;

- e.) After such investigation, direct the staff attorney to present a recommended finding to the council at a public hearing of the council on behalf of the committee; and
 - f.) Provide a recommended sanction upon a sustained finding of misconduct by the council.
4. The Committee will report to the Director of Police Standards and Training its findings. Upon receipt of a valid complaint alleging that a law enforcement officer committed a criminal act or acts while acting as a law enforcement officer, the committee shall report its findings to the director immediately, who shall refer the complaint to the New Hampshire attorney general's office, public integrity unit for investigation.
5. The committee shall dismiss a complaint of misconduct when:
- a.) The complainant lacks standing;
 - b.) The council lacks jurisdiction over the complaint;
 - c.) The complaint is insufficient or there is insufficient cause to proceed;
 - d.) The complaint alleges a minor agency policy violation that does not meet the definition of misconduct; or
 - e.) The statute of limitations has expired under RSA 106-L:23.

D. Departmental Investigations

1. A parallel Professional Standards Investigation will be conducted by the Department to ensure no administrative or departmental violations have occurred, but may be delayed until the resolution of the criminal investigation. Any investigation not within the purview of the Conduct Review Committee will be investigated by the Wolfeboro Police Department Professional Standards Investigator.
2. Upon completion of the Professional Standards Investigation Report, the report and all supporting documents shall be forwarded to the Chief of Police, or designee, for review. The Chief may accept the report as completed or return the report for further investigation.
3. The Professional Standards Investigator shall have the following additional responsibilities:
 - a.) Maintain a complaint log both documentary and electronically
 - b.) Maintain a central file for complaints in a secured area, and in conformity with records retention requirements of local law;
 - c.) Conduct a regular audit of complaints to ascertain and recommend the need for changes in training or policy;
 - d.) Maintain statistical and related information to identify trends involving all complaints of use of force, officer misconduct, and/or abuse of authority;
 - e.) Provide the Police Chief, managers, and/or supervisors with quarterly summaries of complaints and final dispositions against officers.

C. Complaint Categories

The following chart depicts the types of complaints, which are defined by the seriousness of the allegation, along with whom the complaint is generally investigated and reviewed by:

| TYPES | DESCRIPTION | EXAMPLES | GENERALLY HANDLED BY |
|---------|--|---|--|
| CLASS 1 | Allegations that have the potential to damage the reputation of the Department or its personnel, and generally include, but are not limited to, allegations of serious misconduct, serious violations of Standards of Conduct and other written directives, or criminal conduct. | <ul style="list-style-type: none"> • Excessive and/or improper use of force • Brutality • False arrest • Unlawful search and/or seizure • Corruption • Dishonesty and untruthfulness • Gross Insubordination • Violation of civil rights • Bias-based profiling • Sexual harassment • Workplace violence • Violation of criminal statutes | <p>THE OFFICE OF THE CHIEF</p> <p>Formal and Documented with Written Statements and Tape/Video Recorded Interviews</p> <p>LAW ENFORCEMENT CONDUCT REVIEW COMMITTEE</p> |
| CLASS 2 | Allegations that generally include, but are not limited to, allegations of a non-serious nature and violations of Standards of Conduct and other written directives of a non-serious nature. | <ul style="list-style-type: none"> • Violation of policies, procedures or rules, other than those which constitute a Class I Allegation • Inappropriate conduct and/or behavior of a less-serious nature, such as rudeness, discourtesy, and offensive language • Violation of personnel rules | <p>OFFICE OF THE CHIEF AND/OR PROFESSIONAL STANDARDS INVESTIGATOR</p> <p>Formal and Documented with Written Statements</p> |

| | | | |
|------------|---|--|---|
| CLASS 3 | Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior. | When a citizen complains about the behavior of an employee, such as rudeness or demeanor, but does not wish to file an official formal complaint. | FIRST-LINE SUPERVISOR Informal and Documented as Informational Purposes Only |
| CLASS 4 | Minor complaints by a citizen who contacts the Department questioning or informally complaining about a policy, procedure, or tactic used by the Department or an employee. | When a citizen questions or complains about the <i>procedures or tactics</i> used by the Department or employee, such as on-scene command presence, or why handcuffs were used when detaining a subject, but does not wish to file an official formal complaint. | FIRST-LINE SUPERVISOR Informal and Documented as Informational Purposes Only |

D. Serious Misconduct

Serious Misconduct is understood by the Wolfeboro Police Department to mean suspected criminal misconduct and the following misconduct:

1. All civil suits alleging any misconduct by an officer while acting in an official capacity;
2. All civil suits against an officer for off-duty conduct (while not acting in an official capacity) alleging physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
3. All criminal arrests or filing of criminal charges against an officer;
4. All allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;
5. All allegations of an unlawful search and seizure;
6. All allegations of false arrests or filing of false charges;
7. Any act of retaliation or retribution against an officer or person;
8. Any act of retaliation or retribution against a person for filing a complaint against a member;
9. All allegations of excessive use of force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose);
10. Any failure to complete use of force reports required by Wolfeboro Police Department policies and procedures;
11. The providing of false or incomplete information during the course of a Wolfeboro Police Department investigation, or in any report, log, or similar document;
12. All incidents in which: (1) a person is charged by an Officer with assault on a police Officer or resisting arrest or disorderly conduct, and (2) the respective Prosecutor notifies

Wolfeboro Police Department that it is dismissing the charge based upon officer credibility, or a judge dismissed the charge based upon officer credibility; or

13. All incidents in which Wolfeboro Police Department has received written notification from the SA in a criminal case that there has been: (1) an order suppressing evidence because of any constitutional violation involving potential misconduct by a Wolfeboro Police Department Officer, or (2) any other judicial finding of Officer misconduct made in the course of a judicial proceeding, or any request by a federal judge, local judge, or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. Wolfeboro Police Department shall request that all such entities provide them with written notification whenever it has been determined that any of the above has occurred.

E. Investigation of Public Complaints: Supervisor's Role/Responsibility

1. The Supervisor/Investigator assigned to investigate a citizen complaint shall ensure the following protocols are applied in all investigations:
 - a. Every complaint must be investigated and evaluated based on the Preponderance of Evidence standard.
 - b. Any supervisor who is the subject of a complaint, or who authorized the conduct that led to the complaint, is explicitly prohibited from investigating said incident.
 - c. Supervisors shall ensure that all officers who use force, or are involved in the use of force, shall submit a written statement regarding the incident, using the Use of Force Report form. The investigating supervisor will obtain statements from officers who witnessed a use of force.
 - d. During the investigation of a citizen complaint, all relevant evidence including circumstantial, direct, and physical will be considered, and credibility determinations made, if feasible. Officer's statements will not be given any automatic preference over a citizen's statement, nor will a witness' statement be disregarded on account that the witness is connected to the complainant. Every effort will be made to resolve material inconsistencies or discrepancies between witness statements and other collected evidence.
 - e. The Supervisor/Investigator will not close an investigation because the complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of injury, or the complainant will not provide additional medical statements or written statements.
 - f. The Supervisor will consider whether any rule, policy, or procedure of the Wolfeboro Police Department was violated.
 - g. Conduct an investigation in accordance with the procedures outlined in this policy.
2. At the conclusion of the investigation the supervisor shall prepare an investigative report in accordance with the requirements outlined in this policy.

F. Employee Responsibilities to Report Misconduct

1. An employee must report any instances of employee misconduct as soon as practicable following receipt of information regarding the misconduct.

2. In applicable circumstances, employees are to prevent the deterioration or destruction of any evidence that would support or refute the allegation of misconduct.

G. Confidentiality of Complaints

1. All employees who have knowledge that a complaint has been submitted, or will likely occur, are prohibited from discussing material issues related to the matter.
2. Exemptions include: employees subject to the investigation when consulting with Union or legal representation, in accordance with supervisory directives, testifying at an official hearing regarding the matter, or otherwise authorized by law, policy, or regulation.

H. Time Limits on Completing Internal Affairs Investigations

1. Generally, the Department should strive to complete internal investigations as soon as practical. In cases of formal investigations, it may be possible to complete such an investigation within a few days or a calendar week. Once assigned, administrative investigations by a supervisor should be completed and forwarded to the Chief of Police for review within twenty (20) days.
2. Administrative investigations conducted by the Professional Standards Commander, or designee, shall be a priority for the Department, and should be expeditiously investigated and reviewed. These investigations should be completed and forwarded to the Chief of Police for review within thirty (30) days. The Chief of Police may waive the 30-day requirement for complex investigations and investigations involving extenuating circumstances.
3. Time limits governing disciplinary action which may arise from internal investigations for police officers and civilian employees shall comply with any applicable State or Federal statutes, Wolfboro Town Ordinances, and provisions of the respective labor agreements for sworn and non-sworn employees.
4. Supervisors shall be held accountable for the quality of their investigations. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough investigation, neglects to recommend appropriate corrective action, or neglects to implement appropriate corrective action.

I. Notifying Complainant Regarding Status of Complaint Investigation

1. Upon receipt of a complaint, the investigating supervisor shall provide a copy of the Complaint Form to the complainant, acknowledging its receipt. For formal investigations, the investigating supervisor will also send a letter to the complainant (if known) under the signature of the Chief of Police, acknowledging its receipt. In some cases, this may be accomplished in person and/or via telephone. A written letter, however, should still be sent to the complainant for additional verification of receipt of the complaint.
2. The assigned investigator of an internal affairs case is responsible for providing periodic status reports to complainants on all pending internal investigations. Generally, investigators should maintain periodic contact with their complainants and provide them status reports on the investigation, as far as practical. Such contact can be accomplished by telephone or email, in lieu of a written letter.

3. For formal or informal investigations, the reporting party shall be notified as indicated below, by the Chief of Police or designee, informing him/her of the results of the Department's investigation. Such notification should normally occur within ten (10) days after the conclusion of the investigation and the determination by the Chief of Police of the "Finding of Facts."

J. Investigative Interviews and Procedures of Officers

1. Prior to being interviewed, the officer against whom a complaint has been made shall be provided written notice of the allegations of the complaint and the employee's rights and responsibilities relative to the investigation.
2. All interviews will be conducted while the Officer is on duty, unless the seriousness of the investigation or other justifiable reason is such that an immediate interview is required. (*refer to applicable CBA*)
3. During interviews there will be designated one primary interviewer.
4. The complete interview shall be electronically recorded. The recording will note the time at which breaks are taken in the interview process, who requested the break, and the time at which the interview resumed.
5. The Officer shall be provided with the name, rank, and command of all persons present during the questioning.
6. Subject to the approval of the Chief of Police, Officers will be administered the applicable Warnings prior to interview:
 1. Garrity Warnings: For compelled statements if the inquiry is administrative.
 2. Miranda Warnings: Where the inquiry is criminal and the officer is under arrest or in custody.
7. Officers may have Union representation during the Internal Interview.
 - a. Officers, under internal (administrative) review, may have present a union representative with them during any administrative internal investigative interrogation so long as the representative is not involved in any manner (*i.e. a witness or subject of the complaint*) with the incident under investigation, or a conflict of interest does not exist. (*Note: refer to applicable CBA*)
 2. The representative's role is primarily that of an observer and shall not be permitted to interrupt the interview except for the purpose of advising and/or conferring with the officer who is concerned about a contractual right.
 3. In criminal investigations the employee has the right to talk to legal counsel or to have one present during questioning.

8. Examinations and Searches

1. The department may direct order that the officer undergo an intoxicilizer, blood, urine, psychological, polygraph, medical examination, or any other exam, including submission of financial disclosure statements that are not prohibited by law, if it is believed that such an examination is pertinent to the investigation, so long as they do not violate law, or any CBA.

2. An on-duty supervisor may order an officer to submit to a breath, blood, or urine test when there is reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct, and is required to submit to such tests as the result of either being involved in a traffic accident with a department vehicle or involved in a discharge of a firearm on or off-duty.
3. An officer may be ordered to participate in a lineup if it is used solely for administrative purposes. This does not in any way affect the requirements of a legal order to participate. This includes photographic identifications if the investigator deems it necessary.
4. Desks, lockers, storage space, rooms, offices, equipment, information systems, work areas, and vehicles are the property of the Town of Wolfeboro and are subject to inspection. They may also be searched to retrieve town owned property, or to discover evidence of work-related misconduct, if there is reason to suspect (*reasonable suspicion*) such evidence is contained therein.
5. Private property can be stored in areas mentioned above; however, employees will not expect privacy in those areas. Only those employees who are acting in their official capacity may be authorized to search or inspect areas assigned to other employees.

K. Disposition and Adjudication of Complaints

1. All investigations into citizen complaint allegations of misconduct require review and disposition by the officer's chain of command.
2. All citizen complaint allegations of officer misconduct will be fully investigated and documented.
3. All summary actions shall be documented and copies and disposition(s) provided to the subject officer. Copies may, where appropriate, be incorporated in the employee's performance evaluation.
4. Once the investigation is deemed complete, the Professional Standards Commander shall review the complaint report and investigative findings. This authority will compile a report of findings and make a "conclusion of fact" for each allegation and provide a disposition for each allegation as follows:
 - a. *Sustained*: where the investigation determines, by preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;
 - b. *Not sustained*: where the investigation determines, by preponderance of the evidence, that there is insufficient fact(s) to decide whether the alleged misconduct occurred;

c. *Exonerated*: where the investigation determines, by preponderance of the evidence, that the alleged conduct did occur but did not violate Wolfeboro Police Department policies, procedures, or training; or

d. *Unfounded*: where the investigation determines, by preponderance of the evidence, that there are no facts to support that the incident complained of actually occurred.

5. Investigative findings shall also include whether: (i) the police action complied with policy, training, and legal standards regardless of whether the complainant suffered harm; (ii) the incident involved misconduct by any officer; (iii) the use of different tactics should or could have been employed; (iv) the incident indicates a need for additional training, counsel, or other non-disciplinary corrective measures; and (v) the incident suggests that the Wolfeboro Police Department should revise its policies, training, and tactics.
6. Disciplinary action shall be administered in accordance with Department policy and the applicable CBA.
7. Following final disposition of the complaint, a letter shall be sent to the complainant, addressed from the Chief or his/her designee, explaining the final disposition.
8. Whenever reasonably possible, the investigation of complaints should be completed within ninety (90) days from the time the department knew, or should have known, about the alleged violation; unless a stay is granted by the Chief of Police, or another time frame is required by departmental policy, law, or applicable CBA.
9. Final Disciplinary Authority is vested in the Chief of Police.
10. In cases where there exists probable cause to believe that a fraudulent complaint was logged (*officially documented*) in violation of New Hampshire law, the case may be referred to the NH Attorney General's Office for a prosecutorial determination.

L. Professional Standards Records and Confidentiality

1. Professional Standards shall be informed of all final disciplinary decisions.
2. Professional Standards shall forward a copy of all final disciplinary decisions to the Department's personnel authority.
3. Professional Standards case files and information shall be maintained separately from personnel records.
4. Professional Standards information is considered confidential and will be retained under secured conditions within the Chief's Office.
 1. Professional Standards case files and personnel dispositions may not be released to any source without prior approval of the Chief, unless otherwise provided by law.

2. Case investigation files shall be retained for a period of time as defined by law, CBA, or the Chief.

I. TRAINING

The Department will continue to provide training to all officers on the citizen complaint process and the appropriate responses in handling citizen complaints, as developed and administered by the Executive Officer and/or Professional Standards Investigator.

I. Receipt of Complaints

4. When a citizen indicates a desire to file a complaint alleging misconduct of a police officer or other member of the Police Department, he/she shall be referred to the Captain, Staff Sgt, Shift Sergeant/Corporal. This procedure shall also apply when anonymous complaints are received. It is recommended that the complainant be allowed to verbally relate his/her entire version of the incident without interruption, after which the interviewer should ask questions for clarification and detail.
5. A supervisor will attempt to resolve the complaint immediately during the receiving stage if it's non-serious. Oftentimes, a courteous explanation by a police representative will resolve the complaint to the citizen's satisfaction. If it is handled in this manner, a memorandum to the Captain/Executive Officer will be completed along with a complaint investigation face sheet, explaining the nature of the complaint and the resolution reached. The Captain will review these memorandums, assign an internal investigation number, and maintain them in the internal investigation file. The Captain will review the memorandum to determine if they agree with the issue being handled in this manner and note his opinion on the memorandum. He/she may return the complaint for further information or a formal or informal internal investigation if he determines its need with the Chief of Police's recommendation. This memorandum will be completed prior to the end of the supervisor's shift unless otherwise authorized. In matters where the Captain/Executive Officer receives the complaint, the memorandums will be reviewed by the Chief of Police, assigned an internal investigation number, and maintained in the internal investigation file. The Chief of Police will review the memorandum to determine if they agree with the issue being handled in this manner and note his opinion on the memorandum. He/she may return the complaint for further information, or a formal or informal internal investigation if he/she determines its need. This memorandum will be completed prior to the end of the shift unless otherwise authorized.
6. In the case of an informal or formal complaint, the, Staff Sgt or Sergeant/Corporal who receives it, will forward a memo outlining the basic complaint to the Captain for indexing. The memo should contain an initial assessment as to whether it is a formal or informal complaint, or how to resolve it. This shall be completed following the interview and prior to the end of shift. In cases where the Captain handles the informal or formal complaint, the memo outlining the basic complaint will be forwarded to the Chief of Police.

II. Definition of Informal/ Formal Investigation - Complaint

- A. The Captain or Supervisor listening to the citizen complaint or considering an internal investigation, shall make a determination as to whether the incident shall be classified as an informal or formal investigation.
- B. The investigation shall be classified as informal if the complaint or infraction:
 - 1. Is not of a serious nature.
 - 2. Is not a serious violation of Departmental Rules.
 - 3. Is not believed to be serious by the citizen filing the complaint.
 - 4. Is not serious and may be resolved by the Captain or Supervisor to the satisfaction of the complaining citizen. (A memo to the Captain and complaint investigation face sheet is still required, describing the incident and resolution- If resolved by the Captain to the satisfaction of the complaining citizen the memo and investigation face sheet will be forwarded to the Chief of Police).
- C. The investigation of the complaint or infraction shall be classified as a formal complaint in the following instances:
 - 1. If the complainant indicated a desire to file a formal complaint against an employee.
 - 2. The Captain/Executive Officer, Staff Sgt. or Sergeant/Corporal deems the complaint is of sufficient seriousness to warrant a more in-depth investigation.
 - 3. Anytime a citizen complaint or other investigation directed at an employee will 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.
 - 4. The allegations, if true, constitute a misdemeanor or a felony.
 - 5. The Chief of Police, or Captain/Executive Officer prescribes that the formal procedures shall be followed.
- D. As a general statement, it is the policy of this department to advise personnel when they are the subject of any investigation. Unless inconsistent with the requirements of the investigation, the investigating officer shall notify the involved employee of the allegation and the status of any investigation being conducted into the investigation.

III. Procedures for Informal Complaints

- A. If the complaint is not initially resolved and can be handled in an informal manner, then the following procedures shall be followed by the member accepting the complaint:
 - 1. Complete the informal Citizen Complaint Investigation face sheet.

2. Conduct any interviews appropriate, including employees, and gather any other information useful in resolving the matter.
3. Notify the employee and complete the notification sheet.
4. Prepare a report via memo outlining the allegation(s), actions and interviews completed, and recommendation for disposition and submit to the Captain/Executive Officer.
5. The complete report package shall be forwarded to the Captain/Executive Officer (or in the case of a Captain conducting the investigation, the next person in the chain of command, Chief of Police) within seven (7) days, unless an extension is granted. The Captain/Executive Officer shall review the completed package and forward it to the Chief of Police for final review.

IV. Procedures for Formal Complaints

- A. In the event that it is determined by the accepting member or later by the Captain, that the complaint must be investigated in a formal manner, then the following procedure shall apply:
 1. The accepting member shall complete the Citizen Complaint Investigation face sheet.
 2. Obtain a detailed and comprehensive statement signed by the complainant on standard Departmental statement forms, which describe unsworn falsification. A copy of this form should be given to the complainant.
 3. The accepting member shall ensure that the **Authorization for Release of Information to Law Enforcement Agency** form is completed when an allegation indicates that a complainant may have sustained injuries, and has or may require medical attention.
 4. The accepting member will inform the complainant that the Department will conduct an investigation into the incident.
 5. Upon completion of the above, the accepting member shall notify the Captain, or the Chief of Police if the Captain is not available, as soon as possible, but no later than the end of shift.
 6. The accepting member shall forward all information and completed forms concerning the investigation directly to the Captain (or in his/her absence to the Chief of Police) in a confidential manner. This shall be completed prior to securing for that tour of duty.
- B. The Captain (if unable due to a conflict will assign the Staff Sgt.) will conduct further investigation as may be necessary after consultation with the Chief of Police.
- C. The Captain/Executive Officer (Staff Sgt. if a conflict exists) of the investigation shall:

1. Obtain statements from witnesses on standard Departmental statement forms as is applicable.
 2. Interview the accused employee.
 3. Completely brief the Chief of Police concerning the progress of the investigation on a daily basis.
 4. Gather any and all information to thoroughly investigate the matter.
 5. Shall periodically notify the complainant and employee concerning the status of the complaint, after consulting with the Chief of Police, and in no case shall the complainant go longer than seven (7) days without being re-contacted.
 6. Bring the investigation to an expeditious conclusion.
- D. The Chief of Police or, at his/her discretion, the officer in charge of the investigation, shall if appropriate, notify the employee involved that he/she is the subject of a citizen complaint or other internal investigation. At the time of the notification, the employee shall receive a brief statement of the allegations and the employee's rights and responsibilities relative to the investigation. This notification and/or any subsequent interview shall be discretionary and shall be dependent upon the nature of the allegation which in some cases, may dictate that this notification not be made. When it is determined that the notification should be made, it must be determined whether the employee will receive administrative (violation of employment) or constitutional rights (violation of criminal law).
1. When an employee is advised of his/her administrative rights as contained in the **Notification To Employee Under Investigation/Administrative Rights of Employee Under Investigation**, the employee is required to answer all questions fully and truthfully, and disciplinary action including dismissal may be taken, for a refusal to answer. When the employee is compelled to answer questions under threat of adverse administrative action, then the investigating officer must realize that any admissions made by the employee cannot be used against him/her in any subsequent criminal proceeding. The admission can, however, form the basis of administrative disciplinary action. *Gardner v. Broderick*, 392 U.S. 273.
 - a. 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.
 2. In cases where the Department desires to have the option of using any statements made by the employee in a subsequent **Criminal Proceeding**, the County Attorney's office and/or the Attorney General's office will be consulted.
 - a. The employee must be advised of his/her right to remain silent, his/her right to discontinue answering any questions, and warned that anything said may be used against him/her in a court of law.

- b. The employee must be specifically advised that no adverse disciplinary or administrative action will be taken against him/her based upon his/her refusal to answer any questions.
- E. The employee shall not become involved in the investigation in any manner unless expressly requested to do so by the Chief of Police.
- F. Upon completion of the investigation, the officer in charge shall forward a report to the Chief of Police along with his/her recommended action in the format as provided in Section VII.

V. Records and Reporting

- A. Upon completion of the investigation, the Captain/Executive Officer shall forward a report to the Chief of Police along with his/her recommended action in the format as provided below:
 - a. Allegation(s): State as concisely as possible the specific allegations and cite the specific section of the Department Rules and Regulations and/or the RSA that deals with the allegation. Enumerate the allegations when there are more than one.
 - b. Details of the Complaint: Show a chronological summary of the incident or event.
 - c. Findings of Fact: Show by numerical listing, a summary of the facts during the investigation.
 - d. Time Spent on the Investigation: Indicate time spent on the investigation, to include all interviews and report preparation.
 - e. Attachments: Enumerate all attached forms, statements, or other supporting documentation.
 - f. Recommendation: Make a conclusion, if in fact a violation of Rules & Regulations was found, and which finding is recommended on the Citizen Complaint/ Internal Investigation Disposition Form.
 - i. Sustained - the allegation is substantiated.
 - ii. Unfounded - the allegation is false or not factual.
 - iii. Exonerated - the incident occurred, but the officer or employee acted lawfully and properly.
 - iv. Not Sustained - the allegation is not substantiated.
 - v. Misconduct not based upon the complaint, Sustained - substantiated misconduct not alleged in the complaint.

VI. Administrative Responsibilities

- A. The Captain shall:
 - 1. Review the complaint package, have any needed changes/investigation completed, and forward it to the Chief of Police.
- B. The Chief of Police shall review the report package, as well as the adjudication and disposition of the complaint. If all is in order, the Chief of Police or his designee shall:
 - 1. Notify the Captain, and have the employee notified of the final adjudication and disposition. The notification shall be noted on the disposition form. The complainant should be notified of the basic outcome of the investigation, either in person or writing, and this should be noted on the dispositional form as well.
 - 2. The original investigative report package shall be placed in the IA file. If a discipline form has been processed due to the complaint, the original form shall be placed in the employee's personnel file and a copy shall remain part of the original investigative report package. No records of a citizen complaint or other internal investigation shall be maintained in Central Records. The Captain/Executive Officer will keep the files in the administration area.
- C. All records pertaining to citizen complaints and internal investigations shall be maintained by the Captain/Executive Officer in a secure area of the administrative files identified for that purpose.
- D. The Captain shall prepare an annual summary of **formal and informal** citizen complaints and internal investigations, at the conclusion of each calendar year. This report shall be statistical in nature and shall not identify any employee by name and be filed for that pertaining year with the file.
 - 1. The summary report shall contain information relating to:
 - a. The number of investigations.
 - b. The adjudication of those investigations.
 - c. Disciplinary action.
 - d. Any other pertinent information.

VII. Special Investigative Procedures

- A. An employee may be required to provide certain information or to submit to testing or examination in the course of an investigation.
 - 1. Such procedures shall be:

- a. Conducted only with the express authorization of the Chief of Police or designee; and
 - b. Specifically directed and narrowly related to the particular investigation.
2. If the employee refuses an instruction to submit to testing or examination or other requirements of this section, the Chief of Police or his/her designee, may order the employee in writing to comply. If the employee continues to refuse to comply, punitive disciplinary action including dismissal may be taken.
 3. Examples of specific requirements that can be made during an investigation include, but are not limited to, the procedures that follow below.

B. Polygraph Examinations

1. The results of a polygraph examination will generally not be admissible in a Court of Law; however, it will be admissible in a subsequent administrative or disciplinary hearing.

C. Medical, Psychiatric, or Laboratory Examinations

1. 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.
2. If it is desired, for example, to have the option of charging an officer with DWI in court, then he/she should be treated the same as any other suspect for the purposes of implied consent in obtaining a blood alcohol result.

D. Photographs

1. An employee may be required to submit to photographs of a type and format as directed by the Chief of Police, for the purpose of establishing a photographic line-up or for other investigative purposes.

E. In-Person Line-up

1. An employee may be required to participate in an identification line-up.

F. Submission of Financial Disclosure or Other Personal Papers.

1. The Chief of Police may require an employee to turn over such personal papers as is 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 procedures (i.e. Search Warrant, Consent, etc.).

VIII. Search of Department Locker and Desk issued by the Department

- A. An employee's assigned locker and desk area including equipment is the property of the Wolfeboro Police Department. As such, no grant of property right or privacy is expressed or implied.
- B. Except in exigent circumstances, only the Chief of Police may authorize a search of an individual employee's locker, desk area.
- C. During any such search, two supervisory officers shall be present as well as the employee who has been assigned that locker, desk or equipment, if possible.

NOTE: At no time shall the search extend to the subject person's car or home without a warrant or legal exception.

IX. Use of Investigative Reports

- A. All records, reports, letters, memoranda, and other documents relating to any internal investigation into the conduct of any sworn employee of the Department shall not be admissible in any civil action other than in a disciplinary action between the Department and the employee. (RSA 516:36).
- B. Nothing in the RSA will preclude the admissibility of otherwise relevant records of the Department which relate to the incident under investigation that are not generated by or part of the internal investigation. For the purposes of this policy, "internal investigation" shall include any inquiry conducted by the Chief of Police or authorized by him/her.

X. Policy Failure

- A. 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.
- B. In such cases, the investigating officer shall recommend the appropriate adjudication as it relates to the employee (i.e. sustained, unfounded, etc.), and prepare an additional section to his/her narrative report entitled "Policy Failure."
- C. The investigator's report shall identify:
 - 1. The specific policy involved.
 - 2. The harm done to the complainant or the problem that it caused.
 - 3. Any recommended changes to the existing policy to prevent further problems of the same nature in the future.
- D. If the Chief of Police concurs with the investigator's conclusions regarding the policy failure, then he shall assign a person to be responsible for preparing the appropriate policy change.

XI. Time Limits for Completion of Citizen Complaints and Internal Investigations

- A. For Citizen Complaints, the investigation should be completed within 45 days with exceptions granted by the Chief of Police or his/her designee.
- B. For Formal Internal Investigations, the investigation should be completed within 60 days with exceptions granted by the Chief of Police or his/her designee.