



Suffern Police Department GENERAL ORDER

General Order No. 202	Issuance Date: 08/10/08
Subject: CIVILIAN COMPLAINTS	
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Distribution: All Department members	
Rescinded Date:	
Issuing Authority: Chief Andrew Loughlin	

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I. Purpose.

The purpose of this policy is to improve the quality of police services by providing citizens with a fair and effective avenue for redress of legitimate grievances against law enforcement officers or civilians employed by the department and, to protect officers and other employees from false charges of misconduct or wrongdoing and, to provide due process safeguards for accused. Hereinafter, police civilian employees include Police Radio Dispatchers.

II. Policy

It is the policy of the Village of Suffern Police Department to accept and completely investigate all complaints made against the department or complaints made regarding officer/police civilian employee misconduct or wrongdoing from any citizen or agency employee. It is the policy of the department to promptly adjudicate these complainants. It is the policy of the department to maintain the confidentiality of internal affairs investigation and records associated with it. This agency is committed to providing law enforcement services in a fair, impartial and unbiased manner. In so doing, officers are held to the highest standards of official conduct and are expected to respect and protect the rights of all citizens. This agency shall make every effort to eliminate any organizational condition, which fosters, permits, or encourages improper or unacceptable behavior by its employees.

III. Designated Internal Affairs Position

- I. The Chief of Police has primary responsibility for the internal affairs function of the department. The Chief of Police has designated the Lieutenant's as the persons responsible for the overall internal affairs function of the department. The Lieutenant's will act as the liaison between the District Attorney's office and the department during criminal investigations.

IV. Procedures

1. Receipts and Processing of Complaints.

- A. Complaints against police officers or police civilian employees shall be accepted from any source. Each complaint, whether made in person, by letter, email, electronically, telephone or anonymously will be investigated to a logical conclusion. However, the investigating supervisor must personally interview persons filing complaints via telephone, mail or email and all appropriate forms are to be completed to include obtaining pertinent statements from a complainant. Complainants will be advised that their complaint will be investigated.
 - (1) Individuals should be encouraged to submit their complaints in person in order to obtain as complete a report as soon as possible after the incident.
 - (2) If a complaint against a police employee is filed anonymously, whereby the complainant refuses to be personally interviewed, the supervisor conducting the preliminary investigation shall file a confidential, written memo citing all pertinent information to the Chief of Police. The Chief of Police shall cause an investigation to be initiated.
- B. **Complaints against police officers/civilian police employees are to be referred to the Supervisor and shall not be entertained by civilian department personnel.**

2. Classification of Complaints.

- A. **Class I Complaint.** Class I complaints include but are not limited to such issues as general complaints about receiving a summons or dissatisfaction with the quality/type of service provided.
- B. **Class II Complaints.** Class II complaints are considered more serious than Class I complaints and generally relate to such issues including but not limited to an officer's/civilian employee's demeanor, courtesy, lack of effort, curtness or triteness, etc., or those complaints which allege intentional bias or profiling.
- C. **Class III Complaints.** Complaints that allege more serious issues such as abuse of power, excessive force, improper/unjustified arrest, gross misconduct, etc., are considered formal complaints. Due to their serious nature and possible disciplinary actions extensive investigative effort is required.

- (1) In Class III complaints, every effort must be made to have the complainant swear or affirm his/her statement. A complainant alleging excessive use of force shall be asked to sign a form authorizing release medical records (**DF 12D**), to the police department, which relates to the injury(s) alleged sustained due to police conduct or action.
- (2) Class III complaint investigation may be referred to or may include detective bureau resources except in cases where conflict of interest may exist.

The Chief of Police or his designee may elect to provide notice to the Mayor and the Village Attorney any time a Class III complaint is filed.

D. Class IV Complaints. Complaints alleging criminal conduct such as bribery, theft, perjury, narcotics violations, etc., shall be referred to the Chief of Police. Class IV complaints shall be investigated at the command level. Complaints involving serious injury, death or breach of constitutional civil rights shall be referred to the Chief of Police.

The Chief of Police or his designee shall provide notice to the Mayor, Village Attorney and the District Attorney any time a Class IV complaint is investigated as such.

3. Recording of Complaints.

A. Upon receiving notification of a civilian complaint against a police officer or police employee, the Supervisor shall record the initial information from the complainant. The Supervisor will determine the level of complaint that has been initially filed.

- (1) If the Supervisor has command responsibility for the employee subject of a Class I complaint, they will continue with the investigation. If another supervisor has command responsibility, after acquiring the initial data, the complaint is to be referred to the appropriate supervisor and the complainant advised that they will be contacted.
- (2) Class I complaints do not require a department serial number unless, in the opinion of the OIC, a number should be assigned. If a serial number is assigned then **DF 12A** must be completed.
- (3) Class I complaints will be resolved at the squad level by the Supervisor. Upon resolution of the complaint the OIC **may** notify the Chief of Police and Lieutenant of the complaint if he/she feels it is necessary.
- (4) If the complaint is a Class II, III, or IV the OIC will complete **12A**, and **12B** will be provided to the complainant to complete.
 - a. **DF 12B** shall be used to record Class II, III or IV complaint information as provided by the complainant. Complainants should be

encouraged to sign the complaint swearing or affirming to the content.

b. While encouraging the filing of legitimate complaints against officers/civilian employees as a means by which they can be held accountable to the public, the department simultaneously seeks to hold members of the public responsible for the filing of false and malicious allegations against police officers or police civilian employees. (See Dispositions of Complaints in this General Order).

(5) The OIC will then forward **DF 12A** and **DF 12B** (if provided) to a Lieutenant. The Lieutenant will advise the Chief of Police of the complaint, and the Chief of Police will determine who will be assigned to investigate the complaint.

- a. The Chief of Police may delegate authority for internal affairs investigations.
- b. Class II complaints will generally be referred back to the squad supervisor responsible for the employee.
- c. Class III and IV complaints will be investigated on the command level. The Chief of Police may delegate responsibility for these investigations.
- d. Any supervisor who has been charged with investigating a complaint will report directly to the Chief of Police unless otherwise directed to do so by the Chief of Police.

(6) The Chief of Police or Lieutenant shall enter into the computer system a **DF 12A** and it shall be filed numerically with other incident reports. **DFs 12B and 12C are to** be filed in the Chief of Police's office.

4. Investigation and Adjudication of Class II, III, & IV Complaints.

A. The Lieutenant shall interview the complainant, all witnesses and the accused officer/civilian employee, as well as review relevant reports, activity sheets, books, recordings or dispatcher records.

(1) In cases where preliminary investigative data indicates the possibility of a criminal act on the part of the officer/civilian employee, the Lieutenant shall immediately notify the Chief of Police. The Chief or his designee shall notify and confer with the Mayor and the Village Attorney. This should be accomplished prior to the lodging of a formal accusation against an officer or civilian employee.

(2) In all other cases, after the gathering of preliminary investigative data, the accused officer/civilian employee shall then be notified of the complaint and an appointment scheduled for questioning.

(a) The officer/civilian employee shall be entitled to be accompanied by one other person of his or her choosing to attend the questioning session in order to provide counsel and to ensure protection of the officer's/civilian employee's civil rights. The questioning shall take

place at a time when the officer is on duty or during his/her normal working hours if possible.

- (b) Before questioning begins, the accused officer or civilian employee shall be informed of the nature of the complaint, the name of the person in charge of the investigation, and the names of all persons who will be present during the questioning. The questions shall be specifically, directly and narrowly related to the performance of officer's/employee's duties.
 - (c) The officer or civilian employee shall be advised that failure to answer questions may result in disciplinary action. The officer or civilian employee shall be advised that his or her answers and the fruits of these answers **cannot be used against him or her in a criminal proceeding.**
 - (d) If, at any time during the questioning session, the officer/employee becomes a suspect in a criminal act, the administrative questioning shall end, and the officer/employee shall be so informed and read the Miranda warnings. Otherwise, the officer/employee shall be expected to answer questions or submit materials and statements to the investigator when so directed.
 - (e) Investigators shall not subject the officer/ employee to offensive language, threaten punitive action or make promises of reward as an inducement to answer questions. The questioning session shall be conducted for a reasonable duration, taking into consideration the complexity and gravity of the matter being investigated.
 - (f) All questioning sessions shall be tape recorded at the discretion of the assigned investigator. The accused officer/civilian employee may review the department tapes or purchase copies of a transcription, if any are made, before any subsequent statements are made in furtherance of the investigation of the same case.
 - (g) No officer/civilian employee shall have his or her locker or other department- assigned storage space *searched*, without their consent.
 - i. *Exception:* If a valid search warrant has been obtained for the search.
 - ii. *Exception:* Exigent circumstances.
- (3) **DF 12C** shall be used to record all investigative actions as well as the summary of actions and findings and whether the complaint is sustained or not. When complete **DF 12C** shall be forwarded to the Chief of Police.
- (4) If a Class II complaint is sustained, the assigned supervisor shall record on **DF 12C** what actions were taken to correct the situation and/or prevent future occurrences.

This may include verbal reprimand, retraining, etc.

- (5) If a Class III or IV complaint is sustained, the Lieutenant shall record such findings on **DF 12C** and forward them to the Chief of Police.
- (6) Adjudication of Class III or IV complaints will be done at the command level.
- (7) If the Lieutenant concludes that the conduct of any officer/civilian employee was improper, he/she shall cite in **DF 12C**, the agency rule, regulation, or order, which was violated. He/she shall also note any mitigating circumstances surrounding the situation, such as unclear or poorly drafted agency policy, inadequate training, or lack of proper supervision.
- (8) If, however, the Lieutenant determines that the complaint is not sustained, their report shall be forwarded to the Chief of Police.
- (9) All records pertaining to internal affairs investigations will be securely maintained by the Chief of Police. Internal Affairs records will be kept separate and distinct from personnel records. Access to these records will rest with the Chief of Police, and the Lieutenant(s). Access by any other department member must be done with the full knowledge and consent of one of the aforementioned.
- (10) All documents concerning complaints of officer/civilian employee misconduct shall be considered confidential. They may not be removed, duplicated or copied from the location designated for storage of such items by any person without express consent of the Chief of Police or by the written order of a court of competent jurisdiction.

5. Conclusions of Fact.

- A. The investigator shall consider all relevant documents, testimony, recordings and evidence in order to determine what actually happened. He or she shall prepare **DF 12C** providing a summary account of the situation. Gaps or conflicts in evidence and testimony shall be noted and the investigator shall not draw conclusions of fact from them.
- B. At the end of the report, the investigator shall state a conclusion of fact for each allegation of misconduct from among the following dispositions:

Proper Conduct

The allegation is true, but the action of the agency or the officer/civilian employee was consistent with departmental policy, and the complainant suffered no harm.

Improper Conduct

The allegation is true and the action of the agency or the officer/civilian employee was inconsistent with the department policy, and the complainant suffered harm.

Policy Failure

The allegation is true, and although the action of the agency or the officer/civilian employee was consistent with department policy, the complainant suffered harm.

Insufficient Evidence

There is insufficient evidence to prove or refute the allegation.

Unfounded Complaint

There is no credible evidence to support the allegation.

False Accusation

Complaint was filed with knowledge by the complainant that all or some of the information material to the complaint was demonstrably false at the time the complaint was filed.

6. Notifications.

A. The officer(s)/civilian employee(s) subject of a civilian complaint shall be notified of the investigator's conclusions.

(1) **DF 12C** will be used to notify the accused officer/employee.

*B. The Lieutenant shall cause written notification, (a copy of said notification inserted in the permanent file), **or** verbal notification, (a memo detailing this notification inserted in the permanent file), to be received by a complainant who has filed a sworn or affirmed **DF 12B**. No such notifications shall be made to persons who refuse to sign a **DF 12B**. Such notification shall reflect the findings and conclusions of the investigation however a complainant shall not be provided any information regarding the disciplinary process, if such applies. The complainant will only be advised that the matter (discipline, if any) is being administratively handled.*

C. Individuals filing complaints determined to be **False Accusations** may be subject to criminal charges for violation of New York State Penal Law Section 210.45.

7. Caveat

Nothing in this policy is intended to supersede any procedures or agreements with labor contracts. In any conflict, the language of the bargaining agreement shall prevail.

Cross Referenced:

- 1 - Department Form 12A
- 2 - Department Form 12B
- 3 - Department Form 12C
- 4 - Department Form 12D (*Release of Medical Records*)

