



	<b>GENERAL ORDER</b>	Section # <b>25</b>	<b>Saratoga Springs Police Department</b>
Subject:	<b>Investigating Employee Misconduct</b>		
Effective date: 11/28/2009	Reevaluation due: annually	Distribution: <input checked="" type="checkbox"/> DPS <input checked="" type="checkbox"/> Police Personnel <input checked="" type="checkbox"/> Dispatchers <input checked="" type="checkbox"/> PEO's <input checked="" type="checkbox"/> ID Clerk <input checked="" type="checkbox"/> ACO	Number of Pages: 10
Accreditation Standard: 25.1, 25.2, 25.6, 25.8 & GO Sect 14.4 File@: I:\Accreditation\General Orders\GO 25 Investigating Employee Misconduct.doc			Rescinds order: GO 91-007-A1
Special Instructions: This order replaces former General Orders Section 25. Please review the following revisions to this order; Added second paragraph in I. Purpose, Revisions to Sub. IV.B.1.c & d, IV.D.2, IV.F.4, IV.G.2.c, IV.H.4.b, & IV.I.5.			

### I. Purpose

To provide guidelines and procedures for the intake, investigation and disposition of complaints made against the police department or its personnel.

The provisions of this Policy and Procedure shall be subject to the provisions of the Collective Bargaining Agreement, any other Agreement between the City and the PBA, the State and United States Constitutions, State and Federal statutes and law. Nothing contained in this Policy and Procedure shall be interpreted as an agreement by the PBA to its contents or constitute a waiver of or override any rights that the PBA and/or any bargaining unit member or employee may have, including but not limited to, rights under the provisions of the Collective Bargaining Agreement, any other Agreement between the PBA and the City, the State and United States Constitutions, State and Federal statutes and law.

### II. Policy

In order to direct and control the delivery of law enforcement services, the department has established rules, regulations and procedures. These methods of directing departmental activity are promulgated for the purpose of achieving the most efficient and effective police service.

Community support for the police department and its mission is contingent upon citizen confidence in the integrity of the department and its policies, procedures, rules, and personnel. It is

our policy to courteously receive and fairly investigate all complaints made against the department and its activities, practices, and personnel. Our policy goal shall be to correct deficiencies in policies and procedures, detect and deter misconduct, instill confidence in citizens regarding the integrity of the department and its personnel, and seek redress for false accusations made against the agency and members.

### III. Definitions

- A. **Complaint** -- For the purposes of this order, a complaint shall be defined as:
1. Any allegation of an alleged act or omission which, if substantiated, is contrary to the rules, policies and procedures of the department;
  2. Any alleged act or omission which, if substantiated, would constitute a violation of law; or
  3. Any allegation which tends to indicate an actual or potential defect in department policies, procedures, rules or in the delivery of police services.
- B. **Subject Member** -- A member of the department who is the subject of a complaint.
- C. **Internal Affairs Designee** (IAD) - The designated supervisor(s) or unit assigned primary responsibility to conduct investigation into a *complaint*, as previously defined, against an employee of the police department.

## IV. Procedure

### A. Administration

1. The Chief of Police shall be promptly notified about all complaints, and shall designate an Internal Affairs Designee (hereafter referred to as the IAD) to investigate any serious complaint as specified in subdivision IV.D.1 of this order.
2. The designated supervisor or IAD is responsible for the internal affairs investigation and shall report directly to the Chief of Police or his designee in all matters relating to internal affairs.
3. The department shall publish an informational form entitled, *How to make a complaint about a member of the Police Department*.<sup>1</sup> This information shall be made available to the public at the police department, the Department of Public Safety, through any police officer, or by mail if a citizen so requests.
4. Source types of internal affairs complaints shall include, but are not limited to:
  - a. Internal complaints generated by members of the department (e.g. supervisors, officers, civilian employees, etc.).
  - b. External complaints made by known persons from outside the department (e.g., civilians) including third party complainants (e.g., parents, and attorneys).
  - c. Precautionary complainants resulting from anonymous sources, civil claim actions with no formal complaint, and media reports.

### B. General Responsibilities

1. It shall be the duty and responsibility of all members of the department to:
  - a. Report violations of laws, ordinances, rules, regulations, policies, procedures

or orders by any other department member to their immediate supervisor or in their absence, a higher-ranking officer.

- b. Assist citizens who wish to make complaints by directing them to the appropriate supervisor.
  - c. Cooperate with all lawful orders materially relevant to the internal affairs investigation, including an order to submit written explanations as directed via Internal Memorandum<sup>2</sup>.
  - d. Refrain from communicating with anyone regarding an internal affairs investigation except as provided by law, as specifically authorized and/or in connection with his/her representation in the matter.
  - e. Immediately inform a supervisor when involved in a situation likely to generate a complaint, and prepare a report as directed by the supervisor. If a report is prepared, it shall be forwarded through the chain of command to the Chief of Police.
2. Any police officer receiving a report of a complaint from a citizen will use the following guidelines:
    - a. Any police officer below the rank of sergeant should contact the OIC or a supervisor when the OIC is not available, to record and conduct the investigation of a complaint.
    - b. If the OIC or a supervisor is not available, then the officer who first became aware of the complaint shall:
      - 1) Document the complainant's name and contact information and forward that information to the OIC as soon as possible;
      - 2) Provide the complainant with the informational form called How to

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<sup>1</sup> Form included in policy packet

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<sup>2</sup> Form included in policy packet



make a complaint about a member of the Police Department; and

- 3) Inform the complainant that their complaint is being referred to a supervisor, who will contact them to take a formal complaint.

3. All complaints against an employee of the department or the manner in which police service was delivered must be recorded in writing and forwarded to the subject member's supervisor.

- a. A complaint from a citizen will be recorded on the department *Personnel Complaint Form* (Form SSPD 25PC)<sup>3</sup>. Preferably, the complaint summary shall be in the citizen's own handwriting and signed in witness of the complaint taker.

- b. When one employee is making a complaint against another employee, the complaint will be recorded on an *Internal Complaint Memorandum*<sup>4</sup>.

- c. Disciplinary action initiated by a supervisor against a subordinate will be recorded on a *Disciplinary Action Report*<sup>5</sup>, following the procedures as outlined in GO Section 14.4 titled Disciplinary System.

4. Internal affairs investigations are sensitive and confidential in nature. No member shall discuss or divulge any information concerning an internal affairs investigation to any unauthorized person.

#### C. Supervisory Responsibility

1. It shall be the duty and responsibility of all supervisory and command officers to:
  - a. Continually examine all areas of police action and operations under their control to discover procedural defects and

violations of policies, rules and procedures.

- b. Receive, record, and investigate complaints regardless of their source.

- c. Inform the Chief of Police of all complaints through the chain of command.

- d. Inform the subject member(s) supervisor when a complaint has been received or inappropriate behavior observed, and cite action to be taken (i.e. personnel complaint report or disciplinary action report).

- e. Conduct a thorough preliminary investigation at the time of complaint intake.

- f. Conduct follow-up investigations and make recommendations involving members of their command when the alleged offense is:

- 1) Non-criminal in nature; and

- 2) Alleges a non-serious violation of department rules, regulations, policy or procedures.

2. Command officers are responsible for conducting follow-up investigations and making recommendations involving supervisory members of their command holding the rank of police sergeant or above when an alleged offense is:

- 1) Non-criminal in nature; and

- 2) Alleges a non-serious violation of department rules, regulations, policy or procedures.

3. Supervisory personnel shall refer serious complaints to the Chief of Police for assignment of an IAD for the follow-up investigation. The supervisor is still responsible for completion of the preliminary investigation during the complaint intake.

#### D. IAD Responsibilities

1. It shall be the duty and responsibility of personnel assigned IAD responsibility to

<sup>3</sup>Form included in policy packet

<sup>4</sup>Form included in policy packet

<sup>5</sup>Form included in policy packet

conduct the following specific types of serious complaint investigations:

- a. Complaints alleging criminal conduct by department personnel.
  - b. Complaints alleging violations of a person's civil rights.
  - c. Complaints alleging excessive use of force.
  - d. Complaints of sexual harassment.
  - e. Complaints involving multiple officers of various commands.
  - f. Allegations of a serious violation of department policy, procedure or rules.
  - g. Actions by members that result in physical injury or death to another person.
  - h. Situations involving the use of deadly force by department personnel, to include the discharge of firearms in other than lawful sport activity, the destruction of dangerous or injured animals or at an approved firing range.
  - i. Any other complaint when specifically directed by the Chief of Police.
2. IAD will maintain a liaison with the District Attorney in investigations of alleged criminal conduct on the part of the subject member. The District Attorney and any other individual participating in the criminal investigation shall be advised that an administrative investigation is being conducted independent of the criminal investigation, and that the administrative investigation involves information obtained orally or in writing pursuant to a direct order to provide same (hereinafter "Compelled Information"). Neither the District Attorney nor any other individual participating in the criminal investigation shall be advised of the contents of the Compelled Information and shall not be consulted regarding the administrative investigation unless voluntarily waived by the

individual Officer. IAD shall not participate in or be consulted regarding the criminal investigation. Nothing herein shall preclude IAD from accessing information obtained in the course of a criminal investigation.

3. IAD will maintain all investigative records during the course of the investigation and prepare associated reports.
4. IAD shall report on all matters pertaining to internal affairs investigations directly to the Chief of Police, unless otherwise directed.

#### E. Complaint Procedure

1. Any member below the rank of police sergeant becoming aware of any complaint alleging member misconduct shall promptly notify their immediate supervisor, or if unavailable, a superior officer.
2. All complaints shall be received courteously without attempt to dissuade any person from lodging their complaint and promptly recorded in writing. Supervisors may attempt to resolve the complaint.
3. Complaints shall be received regardless of their source (in-person, telephone, letter, anonymous, third-party, etc.).
4. If the complaint appears to be resolved to the citizen's satisfaction, the supervisor shall record this fact and the method used to resolve the complaint on the Personnel Complaint Report.
5. The fact that the matter appears to be resolved shall not relieve personnel of the responsibility of notifying a supervisor or superior officer, completing the report, and submitting it with the necessary documentation.
6. All complaints shall be received and recorded regardless of their source, whether such complaints come to the department's attention by the citizen in person, by letter, eMail, web site, telephone, or

from another person other than the actual complainant.

7. Supervisors and command personnel are authorized to receive complaints from citizens or members of the department.
8. Only higher-ranking officers shall receive complaints about a police sergeant or above.
9. Any supervisory or command officer who receives a complaint directly or has been summoned to receive a complaint shall:
  - a. If the complaint relates to a policy or a procedural issue, explain the policy/procedure to the complainant. If, after the explanation and conciliation is completed, the complainant is satisfied and the matter resolved, no report is necessary.
  - b. If the matter is not resolved, or if the complaint relates to other than a policy or procedural issue, the supervisor or command officer shall request the complainant to complete and sign a Personnel Complaint form and immediately initiate, conduct, and document a preliminary investigation to include:
    - 1) Interviewing the complainant.
    - 2) Obtaining an affidavit containing details of their complaint, if appropriate and as soon as practical (preferably hand written by the complainant).
    - 3) Locating and interviewing available witnesses.
    - 4) Identification of all department members involved.
    - 5) Collection of any evidence pertinent to the complaint.
    - 6) Photographs of the scene and the complainant, as appropriate.
    - 7) Securing appropriate medical examination or treatment and ob-

taining an authorization for release of medical records, when appropriate.

- 8) Neighborhood canvass.
- 9) Collection of relevant information such as all reports relating to the incident, prior history of the complainant, etc.
10. If the complainant will not cooperate with the preliminary investigation, the supervisor or command officer shall fully document their attempt to complete the investigation. The supervisor shall complete the Personnel Complaint Form if the complainant refuses or is otherwise unavailable.
11. Complaints made by intoxicated persons should be received at the time they are made by a supervisor. Only initial information shall be obtained. The complainant should be re-interviewed at a later time (i.e. when he/she is sober) and any discrepancies should be noted in the investigation report.
12. Following intake of a complaint from a citizen or employee, the supervisor shall inform the complainant that:
  - a. Complaints against the department or its employees will be investigated and administratively handled, and
  - b. The investigating supervisor assigned will be in contact with them to provide their contact information.
13. Complainants who request a copy of the Personnel Complaint form or their affidavit shall be referred to the Office of the Chief of Police.
14. The Commissioner of Public Safety and the Chief of Police, or in his absence the Assistant Chief, shall immediately be notified if a member of the department is:
  - a. Arrested or charged with a criminal offense.

- b. Accused or questioned regarding conduct that would constitute a crime.
- c. Temporarily relieved of duty.
- d. Involved in an action resulting in physical injury or death to another person.
- e. Accused of serious misconduct.
- f. Accused of using excessive force or violating a person's civil rights.
- g. Accused of sexual harassment.

15. The Chief shall immediately assign an IAD if the complaint is of the type specified above in subdivision 14.

16. Upon completion of the preliminary investigation, the supervisor shall forward the Personnel Complaint Report and associated documentation through the chain of command to the Chief of Police.

- a. If the preliminary investigation is not completed by the end of the shift, a copy of all completed reports will be forwarded with an indication that further documentation is to follow.
- b. The supervisor/command officer may retain the original preliminary investigation for continued follow-up, if appropriate.

#### F. Investigative Responsibility & Process

1. Investigations of complaints shall be comprehensive in content. The investigation will be undertaken immediately upon receipt of the complaint.
2. Upon becoming aware of a complaint, the supervisor shall, if practical, conduct the investigation. If the subject member's immediate supervisor is not available to conduct the investigation, it shall be the responsibility of the subject member's shift or division commander.
3. A supervisor or IAD assigned to conduct internal affairs follow-up investigations shall:

- a. Contact the complainant to advise that they are investigating the complaint and provide the complainant with their contact information.
- b. Conduct the investigation in a fair, accurate and timely manner.
- c. File investigative status reports through the chain of command until the investigation is concluded.
- d. Request the guidance of, or make required notification to, the appropriate command authority as necessary or required.
- e. Forward the completed follow-up investigation and recommendations through the chain of command to the Chief of Police for review.

4. Upon receipt of a Personnel Complaint preliminary investigation, the Chief of Police or his designee shall:

- a. Review the preliminary investigation for completeness.
- b. Assign a unique control number to the investigation and log the information into the internal affairs complaint log.
- c. Assign an IAD or return the complaint to the subject member's supervisor for follow-up investigation, based upon the seriousness of the allegation.
- d. Provide staff control over internal affairs investigations conducted by a subject member's immediate supervisor and monitor their progress to ensure fairness, accuracy and timely completion.

5. Accused officers or their supervisor may contact the IAD supervisor or Chief's Office to ascertain the status of the investigation of a complaint filed against them.

6. Internal affairs investigations shall be completed within forty-five (45) days of receipt of the complaint.



- a. If the investigation is not completed after forty-five days from the time it was initiated, a regular progress report will be submitted as directed by the Chief of Police.
- b. The investigating officer shall keep the complainant advised in such instances of the case status.

#### G. Interviews & Interrogations

1. Generally, all facts and evidence shall be gathered before the subject member is interviewed and a preliminary decision as to the type of investigation (administrative v. criminal) is present.
2. Prior to being interviewed, the subject member shall be:
  - a. Informed of the nature of the investigation.
  - b. Provided with a copy of their administrative rights<sup>6</sup> if the allegations against the member constitute administrative non-criminal violations of rules, regulations, policies or procedures.
  - c. Entitled to exercise their rights pursuant to the terms of the collective bargaining agreement and under law.
3. During internal interviews concerning allegations of administrative violations, the officer under investigation shall be advised as follows:
  - a. The officer can be required to answer all questions specifically, narrowly and directly related to the performance of his/her official duties;
  - b. Refusal to comply with an order to answer such questions is a violation of departmental rules which may subject the officer to further discipline.
  - c. Any required self-incriminatory admissions made during the interview may only be used in subsequent adminis-

trative proceedings, and shall not be used against the officer in subsequent criminal proceedings.

4. Members being interviewed as a witness only shall be so informed at the initial contact.
5. The interview or interrogation of a member of the Department shall be at a reasonable hour, and when the member of the Department is on duty, unless the exigencies of the investigation dictate otherwise.
6. The interview or interrogation shall take place at a location designated by the investigating supervisor; usually at the police department, or at the office of the Commissioner or Deputy Commissioner of Public Safety, or at the location where the incident allegedly occurred.
7. The questioning shall be completed with reasonable dispatch. Reasonable respites shall be allowed. Time shall be provided for:
  - a. Personal necessities;
  - b. Meals;
  - c. Telephone calls; and
  - d. Rest periods as reasonably necessary.
8. The subject member shall not, during any interrogation, be subjected to any offensive language, nor shall he/she be threatened with dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions.
9. The subject member shall be allowed to consult with his/her union representative before being questioned concerning an alleged violation of law or of the departmental rules, regulations, policy or procedure.
10. If the interrogation relates to a matter upon which charges have been preferred or for which the member has been noti-

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<sup>6</sup>Disciplinary Interview & Advisement of Rights form included in policy packet

fied that charges have been or will be preferred, then the employee shall also be allowed to consult with their attorney if they so request before being questioned, and to have a representative of the union and an attorney present during the interrogation.

11. If a member of the Department is placed under arrest or is detained as a suspect in a criminal investigation, the member must be given their constitutional rights.
12. The preceding Interview and Interrogation procedures shall not to be interpreted in such a manner as to prevent questioning of individuals by superiors, or to prevent supervisors from requiring that written reports be filed at any time with respect to the conduct of police officers in the normal course of business.

#### H. Examinations

1. Internal affairs investigations may require that a subject member submit to certain specific examinations. The scope of the demand for information, or for submission of person for testing or examination must be directly and narrowly related to the particular investigation. If the internal affairs investigation pertains to alleged criminal conduct, search warrants or court orders may be necessary before examinations are conducted.
2. The express authorization of the Chief of Police shall be obtained prior to requiring a member to submit records, photographs or his person for testing or examinations.
3. No member shall be ordered or asked to submit to a Polygraph (lie detector) test for any reason as long as Polygraph tests are not admitted without the consent of the person charged into evidence by Courts of record in Civil or Criminal proceedings in this state. Such tests may be given if requested by the member.

4. If there is a reasonable basis to believe that an employee may be unfit for duty due to physical or mental conditions, the Commissioner of Public Safety can require that employee to submit to a medical examination, at the city's expense and by a doctor designated by the city.<sup>7</sup>
  - a. Medical examinations must be performed under the supervision of a licensed physician.
  - b. Only a licensed Ph.D. Psychologist selected by the department shall conduct psychological examinations.
5. Photographs of a member may be show to complainants or witnesses, when necessary. If photographs are used for identification purposes, they shall be presented in accordance with the rules of evidence.
6. Members may be required to submit information (i.e., documents, papers, electronically stored information, and recordings) related to active internal affairs investigations. Personnel will comply with all lawful orders to produce such information.
7. Departmentally Owned Property including lockers, desks, computers, vehicles, equipment and facilities assigned for use by department members remain the property of the department. As such, no grant of property right or privacy right is made or implied.
8. Communications in department facilities may be monitored and recorded<sup>8</sup>.

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<sup>7</sup>Such an examination can be required pursuant to section 72 of the Civil Service Law which provides that if the individual is found to have a mental or physical disability which prevents him or her from performing the essential duties of the position with or without reasonable accommodation, the appointing authority may place the employee on an involuntary leave of absence.

<sup>8</sup>i.e., department incoming and outgoing telephone lines, areas monitored by video/audio surveillance.



9. Searches of or on departmentally owned property shall be conducted pursuant to law.

10. A subject member under investigation may request that examinations be conducted when the member believes such actions would be beneficial to his defense. Such requests shall be submitted in writing to the Chief of Police for approval.

11. Members shall be provided with copies of the results of all examinations in which the member participates.

I. Complaint Resolution

1. Personnel complaints, internal complaint memorandums, or other allegations of employee misconduct and their associated documents shall be forwarded to the Chief of Police following completion of the investigation for final review.

2. Internal Complaint Memorandums and Personnel Complaints will be closed in one of the following manners:

a. *Sustained*: Evidence sufficient to prove allegations,

b. *Not Sustained*: Insufficient evidence to either prove or disprove allegations.

c. *Exonerated*: Incident occurred but was lawful or proper.

d. *Unfounded*: Allegation is false or not factual.

e. *Policy Failure*: Flaw in policy caused incident.

f. *Training Failure*: Flaw in training caused incident.

g. *Resolved / Withdrawn*: After discussion with complainant, the complaint was resolved to their satisfaction and the complaint withdrawn.

3. Following final disposition of a personnel complaint, notification shall be made to the complainant by the Chief of Police or

his designee explaining the final disposition as permitted by law.<sup>9</sup>

4. Investigations warranting formal discipline<sup>10</sup> shall be referred by the Chief of Police to the Commissioner of Public Safety for formal proceedings.

5. Following final disposition of a personnel complaint, notification shall be made to the employee who is the subject of the complaint, explaining the final disposition.

J. Disciplinary Action

1. A Disciplinary Action Report will be used to report unsatisfactory performance or conduct of members of the Department. Procedures for reporting, processing, and filing the Disciplinary Action Report are described in subdivision IV.D of Section 14.4 General Orders titled Disciplinary Proceedings.

2. Procedures for an emergency suspension of a department member are described in subdivision IV.G; Section 14.4 General Orders titled Disciplinary Proceedings.

3. The disciplinary procedure followed shall be that provided in §75 of the NY State Civil Service Law.

K. Internal Affairs Records

1. Upon resolution, all investigative files pertaining to any personnel complaint or other internal affairs investigation shall be maintained in a locked file located in the Office of the Chief of Police.

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<sup>9</sup> § 50-a Civil Rights Law; All personnel records, used to evaluate performance toward continued employment or promotion, under the control of any police agency or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, except as may be mandated by lawful court order.

<sup>10</sup> Employer initiation of disciplinary action against the accused employee shall occur through the process mandated by Section 75 of the New York State Civil Service Law and the collective bargaining agreement of the accused member.

2. Internal investigation records that are sustained following formal disciplinary proceedings will be referenced in the employee personnel file.

Approved by:



Edward F. Moore  
Chief of Police

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