

UPPER MERION TOWNSHIP POLICE DEPARTMENT
POLICY AND PROCEDURES

No. 1300

Supercedes: NA

Effective: February 6, 2015

Page: NA Section: NA

Page: 1 OF 9

Dated: October 2, 2002

INTERNAL INVESTIGATIONS

- I. **PURPOSE:** To provide guidelines and procedures for the prompt investigation and just disposition of complaints against Upper Merion Township Police Department personnel.
- II. **POLICY:** It is the policy of the Upper Merion Township Police Department to investigate all complaints against employees of the department, and the department itself, through a regulated, fair and impartial internal investigation regardless of the source of the complaint. Investigation of these complaints through standardized procedures will demonstrate the department's desire to provide honest, efficient police service and will inspire public confidence in its personnel. A regulated program of complaint review will also ensure the fair and impartial treatment of all department personnel who become the subject of an internal investigation.
- III. **CROSS-REF:** Upper Merion Township Police Duty Manual, Section IV, "Departmental Discipline".
- IV. **PROCEDURE:**
- A. **CITIZEN COMPLAINTS:** All citizen complaints pertaining to departmental policies or procedures or that allege employee misconduct shall be documented and investigated by the department as follows:
1. Employees of the department shall make all reasonable efforts to allow individuals with complaints about the department or its employees to come forward and openly state their concerns without fear of retribution, indifference or obstruction. No employee shall attempt to dissuade a citizen from making such a complaint.

2. Individuals can make a complaint in writing, by telephone or in person to any department employee. The employee receiving the complaint shall immediately refer the complaint to an on-duty supervisor. If the individual refuses to discuss the complaint with the on-duty supervisor, he/she shall be referred to the next available on-duty command officer.
3. Anonymous complaints or complaints from citizens who wish their names to be held in confidence shall be accepted for investigation. Anonymous, unsubstantiated complaints shall be destroyed.
4. All employees of the department are encouraged to try to immediately resolve a complaint, if the nature of the complaint is within the employee's authority to resolve. When an employee cannot resolve the complaint, the complaint shall be referred to an on-duty supervisor.
5. When the complaint involves an allegation of serious misconduct, the on duty supervisor shall take any immediate action necessary to preserve the integrity of the department and immediately notify the Chief of Police or his/her designee.
6. The supervisor or command officer may attempt to resolve a complaint by discussing the incident with the citizen in reference to department policies and procedures. If the supervisor cannot resolve the complaint an internal investigation shall be conducted. The supervisor shall document the complaint in writing on the Citizen Complaint Form (Attachment A) and promptly forward the complaint to the Chief of Police or his/her designee. When the complaint is made in person, the individual making the complaint shall be asked to sign the complaint form. If the complaint is made by telephone or in writing, a notation to that effect will be made in the signature block on the Citizen Complaint Form. Attempts to resolve complaints shall be noted on the complaint report.

B. EMPLOYEE COMPLAINTS:

1. Whenever any employee observes or is informed of the misconduct of another employee which indicates the need for disciplinary action, he/she shall take authorized and necessary action and render a complete report of the incident and the actions to his/her commanding officer as soon as possible.
2. Employees who wish to file a complaint of misconduct are assured freedom from reprisal in so doing.

C. INVESTIGATIVE RESPONSIBILITIES:

1. The Chief of Police or his/her designee shall be charged with the primary responsibility for review and investigation of all complaints against police department employees, whether initiated by a citizen or another department employee. The designee shall always be of a higher rank than the officer being investigated.

2. Allegations of minor rule violations may be investigated by the appropriate supervisor, while allegations of misconduct that could result in dismissal, suspension, demotion or criminal charges will be investigated by the Chief of Police or his/her designee.

D. NOTIFICATIONS:

1. The police department, upon receipt of the complaint, shall immediately send a letter to the complainant, if known, acknowledging receipt of the complaint, unless the complaint was resolved as per sections IV, A, 3 and 6 of this policy. The investigating employee shall provide status reports to the complainant.
2. A letter approved and signed by the Chief of Police shall be sent to the complainant informing him/her of the results of the investigation.
3. Affected employees shall be notified, as soon as practical, in all cases of an internal investigation, unless such notification would jeopardize the investigation. At the conclusion of the investigation, the employee shall receive notification of the findings as soon as practical.

E. INVESTIGATIVE PROCEDURES:

1. The Chief of Police shall insure that all unresolved complaints are investigated immediately and shall assign a department member or members to conduct an investigation, prepare reports and make recommendations for disposition. Personnel assigned to conduct such investigations will have received prior training in doing so in a manner prescribed by the department.
2. Any personnel assigned to investigate a complaint shall conduct a thorough and impartial investigation. Such an investigation shall include the taking of written statements, when necessary, from all involved persons, the gathering and preservation of evidence, and the recording of all information pertinent to the investigation. Any employee, including the employee charged with misconduct, may be ordered to appear before the investigator at a reasonable time and place to submit to questioning or other investigation.
3. When there is no criminal element to the complaint then the investigation is purely administrative, meaning the result may be personnel action not criminal action. If there is any information to indicate criminal activity by a department employee, then separate criminal and administrative investigations shall be conducted. The Chief of Police may elect to assign an employee to conduct an administrative investigation immediately, or may choose to postpone the administrative investigation until completion of the criminal investigation and/or trial. The Montgomery County District Attorney's Office shall be requested to conduct any criminal investigation involving an employee of this department.

4. Prior to requesting written statements in an internal interview concerning allegations of administrative violations, the investigator shall advise the employee under investigation of his/her Garrity warnings (*Garrity v. New Jersey*, 385 U.S. 493, 1967). The employee shall be advised as follows:
 - a. The employee can be required to answer all questions specifically, narrowly and directly related to the performance of official duties.
 - b. Refusal to comply with an order to answer such questions is a violation of departmental rules, which may subject the employee to further discipline up to, and including dismissal.
 - c. Any required self-incriminatory admission made during the interview may only be used in subsequent administrative proceedings, and shall not be used against the employee in subsequent criminal proceedings.
5. Employees of the department shall be permitted to have a union representative with them in the room during any interview concerning allegations of misconduct that could result in disciplinary action against the employee. (*NLRB v. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689).
6. Any employee who is the subject of an internal investigation may be required by the department to submit to any of the following special examinations:
 - a. Drug and/or alcohol testing- in compliance with the Upper Merion Township Police Department Policy #96-1-22.3.1, "Drug and Alcohol Abuse Testing Program".
 - b. Photographs and/or line-ups- if solely for administrative purposes and criminal prosecution is not contemplated.
 - c. Financial disclosure statements- if material to the particular investigation.
 - d. Handwriting and/or voice print examination.
 - e. Polygraph or CVSA- if specifically directed and narrowly related to an internal investigation, however, when a citizen complaint is the basis for the investigation, the incident is non-criminal, and no corroborating information has been discovered, the employee should not be required to submit to the polygraph or CVSA examination unless the citizen also submits to such an examination which is specifically and narrowly related to the investigation.
 - f. Inspection and/or search of Township property- if there is reasonable suspicion that evidence of work-related misconduct will be found therein. Property includes, but is not limited to vehicles, lockers, offices, files and storage areas.

8. All internal investigations shall be concluded within 30 days from the date the complaint is received. The Chief of Police may extend this time limit for extenuating circumstances. The investigating officer(s) shall provide a status report to the Chief of Police at least every 7 days.
9. At the conclusion of the investigation, the investigator's report shall be in writing and shall document all evidence gathered and state whether, on the basis of the evidence, the investigator believes that a violation has or has not occurred. The investigator's report shall be forwarded to the Chief of Police via the chain of command.
10. No employee will be interviewed by another agency's investigator as part of that agency's internal investigation of their employee. If the investigation stems from an incident that was investigated by the Upper Merion Township Police Department, we will provide our incident report if it is in accordance with Department policy.

F. RELIEF FROM DUTY:

1. Any command or supervisory officer shall have the authority to impose an emergency suspension with pay until the next business day under the following circumstances:
 - a. Employee misconduct personally observed by the command or supervisory officer that is extremely serious in nature and creates an actual or potential harm to the employee or others.
 - b. The employee is unfit for duty due to physical or psychological reasons.
2. An employee receiving an emergency administrative suspension shall be required to report to the Chief of Police on the next business day at 9:00 A.M. unless otherwise directed by competent authority. The command or supervisory officer imposing the suspension shall also report to the Chief of Police at the same time.
3. When the improper conduct of a employee of one unit of the department is of such a nature that immediate or emergency disciplinary action is required of a command or supervisory officer of another unit, such action may be taken at once, but is limited to an oral reprimand or emergency suspension until the next business day.
4. When the command or supervisory officer of one unit orally reprimands an employee of another unit, he/she shall notify the supervisor of the employee so disciplined as soon as possible. He/she shall also submit a written report of this action and reasons therefore to his/her commanding officer and also to the commanding officer of the employee.

5. The Chief of Police may impose an administrative suspension with pay during an internal investigation if deemed necessary for the good of the department.

G. LOUDERMILL HEARING:

1. If the investigation of a complaint of misconduct results in a recommendation from the investigator for dismissal, suspension or demotion, the employee is then entitled to a Loudermill hearing. The hearing shall be documented and made a part of the case file.
2. The hearing shall comply with the charged employee's Loudermill rights (Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985):
 - a. The employee shall receive no less than 24-hour notification of the hearing.
 - b. The employee shall receive a written summary of the charges that constitute the basis for the disciplinary action.
 - c. The employee may choose to appear at the hearing to present an oral or written statement in his/her defense, or waive the hearing in writing.
 - d. The employee shall have the opportunity to respond to the allegations of misconduct against him/her.
 - e. The employee shall be given an explanation of the Township's evidence and an opportunity to present his/her explanation of the circumstances.
3. The Chief of Police shall conduct the Loudermill hearing. Upon conclusion of the hearing, the Chief of Police shall forward his/her recommendation to the Township Manager. When the Chief of Police deems it to be appropriate, the employee's commanding officer and/or the investigators of the complaint may be present at the Loudermill hearing.
4. Final departmental disciplinary authority and responsibility, other than the penalties of dismissal, suspension or demotion, rests with the Chief of Police. Except for oral reprimands and emergency suspensions all departmental discipline must be taken or approved by the Chief of Police. In the case of the penalties of dismissal, suspension or demotion, such penalties shall not become effective unless or until approved by the Township Manager.
5. Any non-probationary officer in the case of dismissal, suspension or demotion shall have the right to appeal the decision according to the provisions of the Police Tenure Act or the Grievance clause of the Police Contract. All other employees of the department shall have the same right of appeal as sworn officers.

H. DISPOSITION:

1. Upon completion of the internal investigation and the receipt of the investigator's and, if applicable, the hearing board's recommendations as to whether an alleged violation has been sustained according to the evidence, the Chief of Police shall give final approval of the disposition of the complaint as follows:
 - a. *Sustained*: The evidence was sufficient to prove the allegations.
 - b. *Not sustained*: The evidence was insufficient to either prove or disprove the allegations.
 - c. *Exonerated*: The incident occurred but was lawful or proper.
 - d. *Unfounded*: The allegation was false or not factual.
 - e. *Policy Failure*: Although the action of the department or the employee was consistent with department policy, the complainant suffered a harm.
2. Upon a finding of "*Sustained*", the Chief of Police shall take disciplinary action. Any employee who commits an offense punishable under any law, statute, or ordinance, or who violates any provision of the rules, regulations or policies of the department, or who disobeys any lawful order, or who is incapable of performing his/her duties is subject to appropriate disciplinary action. The following penalties may be assessed against any employee of the department as disciplinary action:
 - a. Oral reprimand
 - b. Written reprimand
 - c. Voluntary surrender of time off in lieu of other action
 - d. Voluntary surrender of accumulated overtime in lieu of other action
 - e. Suspension
 - f. Fine
 - g. Demotion
 - h. Dismissal from the service
3. In the event of an order of suspension or dismissal, unless otherwise accepted in writing by the Chief of Police, the employee so charged shall return to the department all Township equipment, including badge and weapon. Such Township equipment and property shall be retained by the department during any period of suspension.

I. RECORDS:

1. All internal investigations and corresponding reports, including the original complaint, shall be kept confidential. Nothing in this section shall prohibit any employee who is the subject of an internal investigation from consulting with legal counsel, union representation, or other persons as may be appropriate to the finding of facts.
2. Whenever disciplinary action is taken or recommended (except for oral reprimand) a written report must be submitted immediately by the supervisory officer and must contain the following information:
 - a. The name, rank, OSN, and present assignment of the person being disciplined.
 - b. The date(s) and time(s) of the misconduct and location(s).
 - c. The law, statute, ordinance, rule, regulation or policy violated.
 - d. A complete statement of the facts of the misconduct.
 - e. The punishment imposed or recommended.
 - f. The written signature, OSN, and rank of the preparing officer and his/her position in relation to the employee being disciplined.
3. The written report shall be distributed by the officer imposing or recommending disciplinary action to the Chief of Police via the chain of command. Commanding officers receiving such reports shall make independent recommendation prior to submission of all documents to the Chief of Police.
4. The Chief of Police shall be responsible for maintaining the confidentiality of all internal investigation records generated as a result of this policy. The Chief of Police shall determine who shall have access to any internal investigation case file.
 - a. Citizen complaints of a minor nature that are resolved without an internal investigation will not be filed as an internal investigation case file. Any reports generated from this type of citizen contact will be forwarded via the chain of command to the Chief of Police for his/her review.
5. All records concerning complaints filed and/or investigated in accordance with this policy shall be maintained in a separate and secure area in the office of the Captain of Police, and shall not be released to any party without the approval of the Chief of Police.

APPROVED: _____
Chief Thomas M. Nolan

DATE: _____

APPROVED: _____
Captain James M. Early

DATE: _____

TO BE REVIEWED: ANNUALLY

DISTRIBUTION: All Police Officers
All Civilian Employees
Township Manager
File