
	<b>GAITHERSBURG POLICE DEPARTMENT</b>		
	<b>Internal Affairs</b>		
	<b>GENERAL ORDER</b>	<b>209.1</b>	
<b>Effective Date</b>	<b>05/12/2023</b>		
<b>Authorized by:</b>	<b>Mark P. Sroka</b> CHIEF OF POLICE	SIGNATURE	DATE <b>05/12/2023</b>

**1. PURPOSE**

The purpose of the Department's internal affairs function is to ensure that the integrity of the Department is maintained through an internal system in which objectivity, fairness, and justice are upheld through impartial investigation and review of all complaints made against the Department or any of its personnel.

**2. POLICY**

**2.1.** The Department's internal affairs function operates at the direction of the Chief of Police, or designee, and any Department member assigned to the internal affairs function shall report directly to the Chief of Police, or designee. All Internal Affairs Investigations shall be conducted in accordance with the provisions of this general order and relevant state law.

**2.2.** The Department will investigate all complaints (including anonymous) of misconduct involving any of its personnel.

**3. DEFINITIONS**

**3.1. Employees** - Within the context of this directive, the term “employee” includes both sworn and civilian members of the Gaithersburg Police Department.

**3.2. Complaints Involving a Member of the Public** – Within the context of this directive, the term “complaints involving a member of the public” refers to a complaint of police misconduct involving a member of the public and a sworn officer, regardless of whether the complaint originated from within the Department or from an external source.

**3.3. Internal Complaints of Technical Infractions** – Within the context of this directive, the term “internal complaints of technical infractions” refers to a minor rule violation by a sworn officer solely related to an administrative policy that does not involve an interaction between a member of the public and a sworn officer, or is not otherwise a matter of public concern.

**3.4. Police Misconduct** - Within the context of this directive, the term “police misconduct” refers to any communication from a complainant that alleges a pattern, a practice, or conduct by a sworn officer that includes:

- 3.4.1. Depriving persons of rights protected by the Constitution or laws of the State or the United States;
- 3.4.2. A violation of criminal statute; or
- 3.4.3. A violation of the Department's standards and policies.

#### **4. PROCEDURE**

##### **4.1. General Provisions**

- 4.1.1. Responsibilities of the internal affairs function include:
  - 4.1.1.1. Recording, registering, and controlling investigations of complaints against the Department or any of its personnel;
  - 4.1.1.2. Supervising and controlling the investigation of alleged or suspected misconduct within the Department;
  - 4.1.1.3. Maintaining the confidentiality of internal affairs investigations and records; and
  - 4.1.1.4. Ensuring that internal investigations are conducted in a manner consistent with the provisions of this policy.
- 4.1.2. The internal affairs function maintains a record of all complaints and administrative investigations against the Department or its personnel.
  - 4.1.2.1. To protect confidentiality, such records are maintained in a secure file, separate from any of the Department's other records.
- 4.1.3. All records shall be maintained in accordance with the provisions of State law.

##### **4.2. Complaint Processing**

###### **4.2.1. Complaints Involving a Member of the Public**

- 4.2.1.1. Information describing the complaint process is made available to the public on the Department's complaint forms which are posted in the Police Station's lobby and the Department's website.
- 4.2.1.2. Civilians who file a complaint should receive an initial response to their complaint within 72-hours.

- 4.2.1.3. In the event of an investigation, complainants will receive updates to their complaint a minimum of one time per month until the complaint is resolved. The Department will document communications and all attempts to update the complainant.
- 4.2.1.4. Civilians may make complaints of police misconduct against officers in person, by telephone, via email, or US mail.
- 4.2.1.5. All complaints involving a member of the public will be investigated via an Internal Affairs Investigation, as prescribed in this policy, but will be received and resolved according to provisions in General Order 208.4 –Police Accountability Board Process.
- 4.2.1.6. The Chief of Police will be notified of complaints against the agency or it's employees via phone or email by the Special Operations Bureau Commander (SOBC) or designee. In instances in which the SOBC is not available, the Administrative Bureau Commander or Operations Bureau Commander will make notification.

#### **4.2.2. Internal Complaints of Technical Infractions**

- 4.2.2.1. Internal Complaints of technical infractions will be investigated and resolved in a manner as prescribed in this policy.
- 4.2.2.2. The officer filing the complaint shall complete a Complaint against Personnel Form (GPD 176) and forward to the Chief of Police prior to the end of the shift. .
- 4.2.2.3. The Chief of Police, or designee will determine whether the complaint, if factual would be a violation of Department policy.
  - 4.2.2.3.1. If so, the Chief of Police, or designee will assign an IA tracking number to the GPD 176 (Complaint against Personnel Report), direct a PEWS entry be initiated and assign the complaint for investigation.
- 4.2.2.4. Internal Complaints of Technical Infractions not Requiring Internal Affairs Investigation:
  - 4.2.2.4.1. The Department's supervisory personnel are trained in the investigation and handling of allegations of minor policy violations. Unless the Chief of Police determines that an internal affairs investigation is necessary, internal complaints of technical infractions of minor policy or standards violations may be investigated by bureau commanders or supervisors, as

enumerated herein, after receiving approval from the Chief of Police.

4.2.2.4.2. In those instances where the allegation of police misconduct is a minor technical infraction, and the Chief of Police reasonably believes that if proven factual would be disposed of through non-disciplinary action the Complaint Against Personnel report and all related documents will be retained by the appropriate bureau commander after the disposition for the duration of the performance evaluation period.

4.2.2.4.3. Supervisors investigating or handling complaints will coordinate their efforts with the internal affairs function when guidance or assistance is necessary.

4.2.2.4.4. If a bureau commander or supervisor investigating or handling an internal complaint of technical infractions determines that it is more serious than originally believed, or of a magnitude beyond the investigative capacity of the supervisor, the Chief of Police, or designee shall be immediately consulted for guidance.

### **4.3. Internal Affairs Investigations**

4.3.1. The impact of an Internal Affairs investigation on the integrity of the Department and on employee morale necessitates a speedy resolution to such issues. However, because justice is not served unless a thorough and fair investigation is conducted, the Department has established a 60 day time limit for completing internal affairs investigations. Exceptions to the 60 day limit include:

4.3.1.1. Unresolved court proceedings;

4.3.1.2. Extenuating circumstances beyond the investigator's control; or

4.3.1.3. Good cause as determined by the Chief of Police.

4.3.2. All complaints involving a member of the public will be investigated with an Internal Affairs Investigation and presented and resolved via the Police Accountability Board process.

4.3.3. Internal Complaints of technical infractions may be investigated with an Internal Affairs Investigation or by a bureau commander or supervisor as provisioned in subsection 4.2.2.4. of this policy.

4.3.4. **Emergency Suspension**

- 4.3.4.1. Pending an investigation, the Chief of Police, or designee may impose an Emergency Suspension with or without pay if the Chief of Police determines that such a suspension is in the best interest of the public.
- 4.3.4.2. An Emergency Suspension without pay under this subsection may not exceed 30 days.
- 4.3.4.3. A police officer who is suspended without pay under this subsection is entitled to receive back pay if the Chief of Police, Hearing Board, Administrative Charging Committee determines not to Administratively Charge the sworn officer in connection with the matter on which the suspension is based.
- 4.3.4.4. The Chief of Police, or designee may suspend a sworn officer without pay and suspend the sworn officer's police powers on an emergency basis if the sworn officer is charged with:
  - 4.3.4.4.1. A disqualifying crime, as defined in [Maryland Code, Public Safety §5-101](#);
  - 4.3.4.4.2. A misdemeanor committed in the performance of duties as a police officer; or
  - 4.3.4.4.3. A misdemeanor involving dishonesty, fraud, theft, or misrepresentation.
- 4.3.4.5. A sworn officer who was suspended without pay under the above section is entitled to receive back pay if the criminal charge or charges against the sworn officer results in:
  - 4.3.4.5.1. A finding of not guilty;
  - 4.3.4.5.2. An acquittal;
  - 4.3.4.5.3. A dismissal; or
  - 4.3.4.5.4. A nolle prosequi.
- 4.3.5. Authority of Chief Not Limited – This policy does not limit the authority of the Chief of Police to regulate the competent and efficient operation and management of the Department by any reasonable means including transfer and reassignment if:
  - 4.3.5.1. That action is not punitive in nature; and
  - 4.3.5.2. The Chief of Police determines that action to be in the best interests of the internal management of the Department.

#### 4.3.6. Procedural Rights

##### 4.3.6.1. Right to Engage in Political Activity:

- 4.3.6.1.1. Subject to subsection 4.3.6.2. – Regulation of Secondary Employment, a sworn officer has the same rights to engage in political activity as a City civilian employee.
- 4.3.6.1.2. The right to engage in political activity does not apply when the sworn officer is on-duty or acting in an official capacity.
- 4.3.6.1.3. All City of Gaithersburg employees are subject to following the City’s employment regulations on “Ethics and Political Activity” described in the Personnel Regulations.

##### 4.3.6.2. Regulation of Secondary Employment:

- 4.3.6.2.1. The Department may not prohibit secondary employment by sworn officers; however, may adopt reasonable regulations that relate to secondary employment by sworn officers.
- 4.3.6.2.2. For more details on the Department regulation on secondary employment, see General Order 204.1 – Secondary Employment.

##### 4.3.6.3. Disclosure of Property, Income, and Other Information – A sworn officer may not be required or requested to disclose an item of the sworn officer's property, income, assets, source of income, debts, or personal or domestic expenditures, including those of a member of the sworn officer's family or household, unless:

- 4.3.6.3.1. The information is necessary to investigate a possible conflict of interest with respect to the performance of the sworn officer's official duties; or
- 4.3.6.3.2. The disclosure is required by federal or State law.

##### 4.3.6.4. Retaliation:

- 4.3.6.4.1. A sworn officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to the sworn officer's employment or be threatened with that treatment because the sworn

officer:

4.3.6.4.1.1. Has exercised or demanded the rights granted by this policy;

4.3.6.4.1.2. Has lawfully exercised constitutional rights; or

4.3.6.4.1.3. Has disclosed information that evidences:

- Mismanagement
- Gross mismanagement;
- A waste of government resources;
- A danger to public health or safety; or
- A violation of law committed by another sworn officer.

4.3.6.4.1.4. A sworn officer may not undertake an independent investigation based on knowledge of disclosures described in subsection 4.3.6.4.1.3. of this policy.

4.3.6.5. A sworn officer may not be denied the right to bring suit arising out of the sworn officer's official duties.

4.3.6.6. Waiver of Rights - A sworn officer may waive in writing any provision or all rights granted by this policy.

#### **4.3.7. Notification of Investigation**

4.3.7.1. In accordance with this policy, when an officer is notified that they are the subject of an internal investigation, the investigator shall issue the sworn officer a written statement of the allegations and their rights and responsibilities, relative to the investigation, on an Internal Investigation Notification (GPD Form 242).

4.3.7.2. When an officer is notified that they are the subject of an internal investigation and provided with a copy of the GPD Form 242, the officer will be advised of the following information, via the form:

4.3.7.2.1. That the employee is the subject of an internal

investigation;

4.3.7.2.2. A statement of the allegations and nature of the investigation;

4.3.7.2.3. The name, rank and assignment of the officer in charge of the investigation; and

4.3.7.2.4. The advisement that an officer under investigation has the right to have an attorney or other responsible representative of his or her choice present during any interrogation.

#### **4.3.8. Right to Counsel**

4.3.8.1. A sworn officer who is the subject of a complaint of police misconduct may have the assistance of a legal representative in connection with proceedings.

4.3.8.2. On request, the sworn officer under interrogation has the right to be represented by legal counsel or another responsible representative of the sworn officer's choice who shall be present and available for consultation at all times during the interrogation.

4.3.8.3. The sworn officer may waive the right to counsel as described in this section.

4.3.8.4. Interrogation:

4.3.8.4.1. The interrogation shall be suspended for a period not exceeding five business days until legal representation is obtained.

4.3.8.4.2. Within that five business day period, the Chief of Police for reasonable cause, may extend the period for obtaining legal representation.

4.3.8.4.3. During the interrogation, the sworn officer's legal counsel or representative may:

4.3.8.4.3.1. Request a recess at any time to consult with the sworn officer;

4.3.8.4.3.2. Object to any question posed; and

4.3.8.4.3.3. State on the record outside the presence of the sworn officer the reason for the



objection.

#### **4.3.9. Interrogation of Sworn Officer**

- 4.3.9.1. In General – The investigation or interrogation of a sworn officer for a reason that may lead to disciplinary action, demotion, or dismissal shall be conducted in accordance with this section.
- 4.3.9.2. Interrogating or Investigating Officer – For purposes of this subsection, the investigating officer or interrogating officer shall be a sworn officer.
- 4.3.9.3. Disclosures to Sworn Officer under Investigation:
  - 4.3.9.3.1. The sworn officer under investigation shall be informed in writing via GPD Form 242 – Internal Investigation Notification of the name, rank, and command of:
    - 4.3.9.3.1.1. The sworn officer in charge of the investigation;
    - 4.3.9.3.1.2. The interrogating officer; and
    - 4.3.9.3.1.3. Each individual present during an interrogation.
  - 4.3.9.3.2. Before an interrogation, the sworn officer under investigation shall be informed in writing of the nature of the investigation.
  - 4.3.9.3.3. Disclosures to sworn officer under arrest – If the sworn officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the sworn officer shall be informed completely of all of their constitutional rights before the interrogation begins.
- 4.3.9.4. Time of Interrogation – Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the sworn officer is on duty.
- 4.3.9.5. Place of Interrogation – The interrogation shall take place at the Gaithersburg Police Station or at another reasonable and appropriate place, as designated by the investigating officer.

4.3.9.6. Record of Interrogation – A complete video recording shall be kept of the entire interrogation, including all recess periods of the sworn officer.

4.3.9.7. Conduct of Interrogation:

4.3.9.7.1. All questions directed to the sworn officer under interrogation shall be asked by and through one interrogating officer during any one session of interrogation consistent with subsection 4.3.9.7. of this policy.

4.3.9.7.2. Each session of interrogation shall be for a reasonable period of time, and allow for personal necessities and rest periods, as reasonably necessary.

4.3.9.7.3. Threat of transfer, dismissal, or disciplinary action prohibited – The sworn officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

#### 4.3.10. Tests and Examinations

4.3.10.1. The Department may order the sworn officer under investigation to submit to blood or breath alcohol tests, or urine tests for controlled dangerous substances, truth verification examinations, or interrogations that specifically relate to the subject matter of the investigation.

4.3.10.2. If the Department orders the sworn officer to submit to a test, examination, or interrogation and the sworn officer refuses to do so, the Department may commence an action that may lead to a punitive measure as a result of the refusal.

4.3.10.2.1. If the Department orders the sworn officer to submit to a test, examination, or interrogation, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the sworn officer per applicable Maryland State Law.

4.3.10.3. Truth Verification Examinations:

4.3.10.3.1. If the Department orders a sworn officer to submit to a truth verification examination, the results of the truth verification examination are not admissible or discoverable in a criminal or civil proceeding against the officer per applicable Maryland State Law.

- 4.3.10.3.2. If the Department orders a sworn officer to submit to a truth verification examination, the results of the truth verification examination may not be used as evidence in an administrative hearing unless the Department and the sworn officer agree to the admission of the results.
- 4.3.10.3.3. The sworn officer's legal counsel or representative may:
  - 4.3.10.3.3.1. Review the questions to be asked with sworn officer before the administration of the examination; and
  - 4.3.10.3.3.2. The legal counsel or representative is allowed to observe the administration of the truth verification examination via recording of the examination, but are not allowed to be in the room.

#### **4.4. Information Provided on Completion of Investigation:**

##### 4.4.1. Notification of Complaints Involving a Member of the Public

- 4.4.1.1. Sworn officers shall be notified of the results of a complaint involving a member of the public in a manner consistent with General Order 208.4 –Police Accountability Board Process.

##### 4.4.2. Notification of Internal Complaints of Technical Infractions

- 4.4.2.1. Conclusion of Fact – Upon completion of an internal complaint of a technical infraction, the case will be classified accordingly using the following terminology:
  - 4.4.2.1.1. Sustained: A preponderance of the evidence shows an officer violated any law, regulation, directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor, agency protocol, standard operating procedure, rule, or training;
  - 4.4.2.1.2. Not Sustained: The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation;
  - 4.4.2.1.3. Exonerated: A preponderance of the evidence shows the alleged conduct did occur but did not violate any law, regulation, directive, guidance, policy, or procedure issued by the Attorney General or County

Prosecutor, agency protocol, standard operating procedure, rule or training.

4.4.2.1.4. Unfounded: A preponderance of the evidence shows that the alleged misconduct did not occur.

4.4.2.1.5. Policy Issue: The employee acted in accordance with Department policy, but the investigation has revealed the necessity to revise policy and retrain affected personnel on such policy;

4.4.2.1.6. Training Issue: The employee acted in accordance with the manner in which he or she was trained but the investigation revealed a necessity to revise the training.

4.4.2.2. On completion of an internal complaint investigation of a technical infraction and at least ten days before a hearing board (if needed), the law enforcement officer under investigation shall be:

4.4.2.2.1. Notified of the name of each witness and of each charge and specification against the law enforcement officer; and

4.4.2.2.2. Provided with a copy of the investigatory file, any test results, and any exculpatory information, if the sworn officer and their legal counsel or representative agree to:

4.4.2.2.2.1. Execute a confidentiality agreement with the Department not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the sworn officer; and

4.4.2.2.2.2. The law enforcement agency may exclude from the exculpatory information provided to a sworn officer under this subsection:

- The identity of confidential sources;
- Non-exculpatory information; and
- Recommendations as to charges, disposition, or punishment.

## **4.5. Adverse Material**

- 4.5.1. The Department may not insert adverse material into a personnel file of the sworn officer, except the file of the internal investigation, unless the sworn officer has an opportunity to review, sign acknowledgement of receipt, receive a copy of, and comment in writing on the adverse material.
- 4.5.2. Signing acknowledgment of receipt does not constitute an acknowledgment of guilt.
- 4.5.3. The sworn officer may waive the right described in this subsection.
- 4.5.4. The Department may not bring administrative charges against a sworn officer unless the charges are filed within 365 days after the Department becomes aware of the initial action being investigated, or within 365 days after a criminal investigation or prosecution concludes.

#### **4.6. Summary Punishment**

- 4.6.1. Summary punishment is only applicable to internal complaints of technical infractions against sworn officers.
- 4.6.2. This section does not prohibit summary punishment by higher ranking sworn officers as designated by the chief.
- 4.6.3. Imposition:
  - 4.6.3.1. Summary punishment may be imposed for internal complaints of minor violations of technical infractions if:
    - 4.6.3.1.1. The facts that constitute the minor violation are not in dispute;
    - 4.6.3.1.2. The sworn officer waives the hearing provided under subsection 4.6. Summary Punishment; and
    - 4.6.3.1.3. The sworn officer accepts the punishment imposed by the Chief of Police, or designee.
  - 4.6.3.2. Summary punishment imposed under this subsection may not exceed suspension of three days without pay, or a fine of \$150.
- 4.6.4. Refusal:
  - 4.6.4.1. If a sworn officer is offered summary punishment and refuses:
    - 4.6.4.1.1. The Chief of Police may convene a hearing board of one member; and
    - 4.6.4.1.2. The hearing board has only the authority to recommend the sanctions provided in this section for

summary punishment.

4.6.4.2. If a single member hearing board is convened:

4.6.4.2.1. The member need not be of the same rank as the sworn officer.

#### **4.7. Hearing by Hearing Board**

##### **4.7.1. Right to Hearing:**

4.7.1.1. The right to a hearing board is only applicable to internal complaints of technical infractions against sworn officers.

4.7.1.2. Except as provided in provisions covering Summary Punishment, of this policy, if the investigation or interrogation of a sworn officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the sworn officer is entitled to a hearing on the issues by a hearing board before the Department takes that action.

4.7.1.3. A sworn officer who has been convicted of a felony is not entitled to a hearing under this section.

##### **4.7.2. Notice of Hearing:**

4.7.2.1. The Department shall give written notice to the sworn officer of the right to a hearing by a hearing board.

4.7.2.2. The written notice required shall state the time and place of the hearing and the issues involved.

##### **4.7.3. Membership of Hearing Board:**

4.7.3.1. Except as provided in Section 4.6. – Summary Punishment, the hearing board authorized under this section shall consist of at least three voting members who:

4.7.3.1.1. Are appointed by the Chief of Police and chosen from sworn officers within the Gaithersburg Police Department, or from law enforcement officers of another law enforcement agency with the approval of the Chief of Police of the other agency; and

4.7.3.1.2. Have had no part in the investigation or interrogation

of the sworn officer.

- 4.7.3.1.3. At least one member of the hearing board shall be of the same rank as the sworn officer against whom the internal complaint is filed.

#### **4.7.4. Conduct of Hearing:**

- 4.7.4.1. The hearing shall be conducted by a hearing board, and open to the public, unless the Chief of Police finds a hearing must be closed for good cause, including to protect a confidential informant, an undercover officer, or a child witness.
- 4.7.4.2. The hearing board shall give the Department and the sworn officer ample opportunity to present evidence and argument about the allegations.
- 4.7.4.3. The Department and sworn officer may be represented by legal counsel.
- 4.7.4.4. Each party has the right to cross-examine witnesses who testify and each party may submit rebuttal evidence.

#### **4.7.5. Evidence:**

- 4.7.5.1. Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect.
- 4.7.5.2. The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.
- 4.7.5.3. Each record or document that a party desires to use shall be offered and made a part of the record.
- 4.7.5.4. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

#### **4.7.6. Judicial Notice**

- 4.7.6.1. The hearing board may take notice of:
  - 4.7.6.1.1. Judicially cognizable facts; and
  - 4.7.6.1.2. General, technical, or scientific facts within its specialized knowledge.
- 4.7.6.2. The hearing board shall:

- 4.7.6.2.1. Notify each party of the facts so noticed either before or during the hearing, or by reference in preliminary reports or otherwise; and
- 4.7.6.2.2. Give each party an opportunity and reasonable time to contest the facts so noticed.
- 4.7.6.3. The hearing board may use its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.
- 4.7.7. **Oaths** – The Hearing Board Chairman shall administer oaths or affirmations and examine individuals under oath.
- 4.7.8. **Official Record** – An official record, including testimony, exhibits, and video recording of the hearing shall be kept by the Department.
- 4.7.9. **Disposition of Administrative Action**
  - 4.7.9.1. A decision, or action taken as a result of a hearing board shall be in writing and accompanied by findings of fact.
  - 4.7.9.2. The findings of fact shall consist of a concise statement on each issue in the case.
  - 4.7.9.3. A finding of anything other than Sustained is final.
  - 4.7.9.4. If the hearing board makes a finding of Sustained, the hearing board shall:
    - 4.7.9.4.1. Reconvene the hearing;
    - 4.7.9.4.2. Receive evidence; and
    - 4.7.9.4.3. Consider the sworn officer's past job performance and other relevant information as factors before making recommendations to the Chief of Police.
  - 4.7.9.5. A copy of the hearing board decision, findings of fact, conclusions, and written recommendations for action shall be delivered or mailed promptly to:
    - 4.7.9.5.1. The sworn officer or their legal counsel or representative of record; and
    - 4.7.9.5.2. The Chief of Police.
  - 4.7.9.6. Recommendation of Penalty:



- 4.7.9.6.1. After a disciplinary hearing board and a finding of Sustained, the hearing board may recommend the penalty it considers appropriate under the circumstances, including demotion, dismissal, transfer, and loss of pay, reassignment, or other similar action that is considered punitive.
  - 4.7.9.6.2. The hearing board's recommendation of penalty shall be consistent with the Department Disciplinary Matrix.
  - 4.7.9.6.3. The recommendation of a penalty shall be in writing.
- 4.7.9.7. Final Decision of Hearing Board:
- 4.7.9.7.1. Within 30 days after receipt of the recommendations of the hearing board, the Chief of Police shall:
    - 4.7.9.7.1.1. Review the findings, conclusions, and recommendations of the hearing board; and
    - 4.7.9.7.1.2. Issue a final order.
  - 4.7.9.7.2. The recommendation of a penalty by the hearing board is not binding on the Chief of Police. The Chief of Police shall consider the sworn officer's past job performance as a factor before imposing a penalty.
  - 4.7.9.7.3. The Chief of Police may increase the recommended penalty of the hearing board only if the Chief of Police personally:
    - 4.7.9.7.3.1. Reviews the entire record of the proceedings of the hearing board;
    - 4.7.9.7.3.2. Meets with the sworn officer and allows the sworn officer to be heard on the record;
    - 4.7.9.7.3.3. Discloses and provides in writing to the sworn officer, at least ten days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and
    - 4.7.9.7.3.4. States on the record the substantial

evidence relied on to support the increase of the recommended penalty.

**4.8. Record Relating to Administrative or Criminal Investigation of Misconduct**

4.8.1. A record relating to an administrative or criminal investigation of misconduct by a sworn officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, may not be:

4.8.1.1. Expunged; or

4.8.1.2. Destroyed by the Department.