



BRAINTREE POLICE DEPARTMENT

Policy and Procedure

Internal Affairs/Professional Standards

2020-92

Date of Issue: 05/20/2020

Review Date:

Revised:

Issuing Authority:

Chief Mark W. Dubois

Certification Standards: **52.1.1; 52.1.2; 52.1.3; 52.2.1; 52.2.2; 52.2.3; 52.2.5; 52.2.6 a,b,c,d,e; 52.2.7, 52.2.8**

Accreditation Standards: **11.4.5**

Optional Accreditation Standards: **52.1.4; 52.2.4 a,b,c; 25.1.2**

I. Policy

The Braintree Police Department (BPD) will investigate all complaints, including anonymous complaints, of misconduct made against a department employee (sworn or non-sworn, paid or unpaid) or the agency itself. **[52.1.1]**

II. Internal Affairs Function

The Police Chief (Chief) may delegate the BPD's Internal Affairs (IA) function to the Deputy Chief of Administration or may hire an outside investigator depending on the circumstances. The Deputy Chief of Administration has the authority to assign individual IA investigations to either a lieutenant or sergeant depending on the nature of the allegation. In certain cases, and at the discretion of the Chief, the IA Investigator will report directly to the Chief. Generally, con-criminal IA investigations will be conducted by the Professional Standards lieutenant and criminal IA investigations will be conducted by the Detective lieutenant. **[52.1.3]**

III. Internal Affairs Objectives and Investigator Responsibilities

The primary objectives of Internal Affairs are:

- Protection of the public, department, and its employees;
- Identification of training and procedural deficiencies; and
- Removal of unfit personnel.

The primary responsibilities of Internal Affairs Investigators are:

- Investigating allegations of misconduct made against the BPD and its employees;
- Conducting a professional and impartial investigation;

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- Uncovering the facts; and
- Maintaining the confidentiality of those investigations and records. **[52.1.2]**

IV. Citizen Complaint Procedures

A BPD “citizen complaint form” should be used to record all complaints of misconduct. The BPD citizen complaint form is available online and explains the procedure complainants should follow to register their complaint. **[52.1.4]**

The following information should be included on the complaint form:

1. Date and time the complaint is submitted;
2. Name, address, and telephone number of the complainant;
3. Name, address, and telephone numbers of any witnesses;
4. Name, badge number, or description of the employee against whom the complaint is made;
5. Date, time, and location where complained of conduct occurred;
6. Complainant’s statement describing the nature of the complaint; and
7. Complainant’s signature or the printed name and signature of a parent or guardian if complainant is under 18 years of age.

V. Receiving and Recording Citizen Complaints

- All persons making a complaint will be treated with courtesy and respect.
- No one should be denied the opportunity to register a complaint, nor should any complainant be directed to call or come back at a later time.
- It is preferred that the on-duty Shift Commander receive citizen complaints whether in person or by telephone.
- The Shift Commander or his/her designee will sign, date, and provide the complainant with a copy of his/her complaint to serve as a receipt that the complaint was received and will be processed. **[52.2.4 a]**
- If a complainant is too intoxicated or otherwise incapable of filling out the complaint form, his/her complaint should be transcribed, at the Shift Commander’s discretion, onto a department complaint form.
- Shift Commanders receiving citizen complaints over the telephone shall, if possible, ascertain the complainant’s name, telephone number, and nature of the complaint and record same on a citizen’s complaint form.
- Persons making a complaint should be asked to sign the complaint form. If the complainant refuses to sign, the Shift Commander should note that on the complaint form.
- Citizen’s complaints against the agency or its employees shall be scanned and emailed to the Chief or his/his designee by the supervisor receiving the complaint; the original copy shall be sealed in an envelope and forwarded to Administration. **[52.2.2]**

VI. Employee Complaints

BPD employees (sworn or non-sworn, paid or unpaid) who wish to make a complaint against another BPD employee shall:

- Document his/her complaint in a To/From format.
- Forward the complaint to his/her Unit/Shift Commander.
- If the Unit/Shift Commander is the subject of the complaint, the employee shall forward his/her complaint to the Deputy Chief of Administration.
- Unit/Shift Commanders who receive an employee complaint shall scan and email the complaint to the Chief or his/her designee and forward the original to Administration. **[52.2.2]**

VII. Prisoner Complaints

Prisoners who allege misconduct or mistreatment by a department employee shall be notified of their right to file a complaint.

VIII. Citizen Complaints Received in the Field

Any officer approached by a complainant outside of the station shall request a supervisor respond to his/her location to speak with that complainant. If a supervisor is unavailable, the complainant should be directed to the station to speak with the Shift Commander.

IX. Complaints against the Chief

All complaints against the Chief shall be directed/forwarded to the Head of Human Resources and the Mayor's Office.

X. Complaint Categories

i. Low-Level Citizen Complaints/Employee Issues

Low-level citizen complaints and employee issues (i.e. tardiness, failure to file appropriate reports/paperwork, rudeness) will generally be handled by the line supervisors (Shift Commanders, Sergeants). **[52.2.1]**

Supervisors receiving multiple citizen complaints about, or having repeated performance issues with, the same employee shall notify the Deputy Chief of Administration via phone as soon as possible. **[52.2.1]**

ii. High-Level Citizen Complaints/Employee Issues

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Supervisors receiving citizen complaints, or having performance issues with, an employee that are of a serious nature shall notify the Chief or his/her designee immediately via phone since these allegations might generate heightened community interest and/or increased department liability. **[52.2.2; 11.4.5]**

Examples of serious citizen complaints or employee issues are:

- a. Allegations of corruption, brutality, misuse of force;
- b. Breach of civil rights;
- c. Criminal misconduct;
- d. On-duty drug/alcohol use. **[52.2.2]**

Serious citizen complaints and employee issues will be investigated by the Deputy Chief of Administration or his/her designee. **[52.2.1]**

XI. Internal Affairs Investigations Time Limits

- All IA investigations shall be commenced immediately upon receipt of the complaint and completed within (30) days after the investigator makes contact with the complainant. **[52.2.3]**
- Circumstances justifying an IA investigation to extend beyond (30) days shall be documented and forwarded to the Chief or his/her designee.
- The Chief may grant an extension for any IA investigation. **[52.2.3]**
- The complainant and employee(s) under investigation shall be notified if an IA investigation extends beyond (30) days; thereafter, both will receive status reports every (14) days until the investigation is concluded. **[52.2.4 b]**
- If an investigation cannot be completed, the investigator shall notify the Chief or his/her designee.

XII. Notice of Written Statement of Allegations

Unless the Chief determines that disclosure might jeopardize the investigation, employees shall receive a written statement of the allegation(s) against them. **[52.2.5]**

XIII. Investigations of Off-Duty Conduct

The BPD may investigate an employee's off-duty conduct if that conduct could reasonably affect the employee's fitness or ability to continue in the police service or such conduct discredits the department.

XIV. Investigations

All employees shall be advised of their rights and responsibilities relative to any investigation. BPOA, BPSOA, BPMA and AFSCME employees shall also be afforded all additional rights contained within their respective collective bargaining agreements. **[52.2.5]**

A. Criminal Investigations

If the allegations against an employee could result in a criminal prosecution, the accused employee must be granted all applicable constitutional and statutory rights. **[52.2.5]** Prior to questioning, an employee who is the subject of a criminal investigation shall be given the Miranda warnings in writing. The employee must sign the Miranda form before questioning takes place. **[52.2.5]**

An employee who is being questioned about alleged personal involvement in criminal prosecution cannot be discharged or otherwise penalized solely for invoking the right to remain silent as guaranteed by the Fifth Amendment or for refusing to sign a waiver of immunity.¹

B. Administrative Investigations

If the allegations against an employee could result in disciplinary action, the accused employee is entitled to a fair and objective investigation.

Officers have the right to union representation, upon request, when they reasonably believe their actions will result in disciplinary action.² Requests for a union representative or attorney to be present during administrative investigations will be granted if the investigation is not thereby unduly delayed.

C. Carney Rights

All employees, when requested by the Chief or his/her designee, must respond fully and truthfully to all questions regarding their performance of official duties or their off-duty misconduct that affects their fitness or ability to remain in the police service. An employee who fails to answer completely and truthfully to such inquires may be punished by appropriate disciplinary action, including dismissal from the Department.³

The official conducting the interview must, at the time of the interview, specify to the employee being questioned the precise repercussions that may result if the officer fails to respond (i.e., suspension, discharge, or the exact form of discipline).⁴ **[52.2.5]**

An employee properly asserting any right secured to him or her by the United States Constitution or the Massachusetts Declaration of Rights, with respect to self-incrimination, shall not be compelled into providing a statement until one of the following apply:

¹ *Uniformed Sanitation Men Ass'n, Inc. v. Comm. of Sanitation of New York*, 392 U.S. 280, 88 S.Ct. 1917(1969); *Gardner v. Broderick*, 392 U.S. 273, 88 S.Ct. 1913 (1968).

² *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

³ *Carney v. Springfield*, 403 Mass. 604, 532 N.E.2d 631 (1988)

⁴ *Id.*

1. A grant of transactional immunity has been obtained⁵; or
2. The criminal charges against the accused person have been resolved.

A grant of transactional immunity must be approved by every District Attorney in the Commonwealth, and the Attorney General.⁶ The Chief is responsible for securing a written grant of transactional immunity and an employee may decline to answer questions in a criminal investigation until such documentation is received.

D. Double Jeopardy

No double jeopardy exists when an employee is found not guilty in court of criminal charges and is then found guilty of departmental charges after disciplinary hearing, as the department charges are administrative in nature and can be sustained by a “preponderance of the evidence” rather than the criminal court standard of “beyond a reasonable doubt.”

E. Conducting Internal Investigations

- Any interview or questioning should take place during the employee’s regular duty hours.
- Any interview or questioning should not be prolonged without reasonable rest periods.
- An employee shall not be harassed or threatened during questioning.

F. Medical or Laboratory Examinations

Upon the order of the Chief or his/her designee, and at the department’s expense, an employee may be required to submit to a medical or laboratory examination. This examination must be specifically directed and narrowly related to a particular IA investigation being conducted by the department. **[52.2.6 a]** Drug testing shall be done consistent with existing policy.

G. Identification

An officer may be required to be photographed and or compelled to stand in a lineup for identification in connection with an IA investigation; refusal can be the basis for an additional disciplinary charge of refusal to obey a lawful order. **[52.2.6 b,c]** (See BPD ***Eyewitness Identification Policy***)

H. Searches

Department property furnished to the officer in which it is clearly understood in advance that an officer has “no expectation of privacy,” such as desks, lockers, computers, other electronic devices, or vehicles, may be searched without a warrant.

⁵ Id.

⁶ *Baglioni v. Chief of Police of Salem*, 421 Mass. 229, 656 N.E. 2d 1223 (1995).

I. Financial Disclosures

An officer may be compelled to submit a financial disclosure statement as part of an IA investigation. However, if requested, the department shall show the relevance of such statement in writing, request only relevant and specific items, and allow a reasonable amount of time for submission.⁷ **[52.2.6 d]**

J. Use of the Polygraph/Lie Detector Test

An officer may be required to submit to a polygraph or lie detector test in connection with an IA investigation if such test is conducted in the course of a departmental investigation of criminal activity. Under such circumstances, an officer may face disciplinary action for refusal.⁸ **[52.2.6 e]** Officer's rights under *Garrity*, *Carney* and *Baglioni* apply to polygraph tests.⁹

K. Recording Interviews

Depending on the circumstances, the complete interview with an employee in internal administrative investigations may be audio and video recorded.

L. Withdrawn Complaints

If a complainant indicates a desire to withdraw the complaint during the course of an internal investigation, every effort should be made to ensure that this decision is made voluntarily. A signed statement to this effect should be obtained from the complainant. Even if a complaint is withdrawn, a report of the investigation to date should be prepared for the Chief or his/her designee and approval sought for the termination or continuation of the investigation.

M. Investigator's Report

At the conclusion of any IA investigation, a full report shall be prepared for submission to the Chief or his/her designee and shall include:

- a. The original complaint or allegation;
- b. Summary of events;
- c. Summary of all evidence gathered;
- d. Conclusion of fact/findings as to whether the charges made by the complainant were: **[52.2.8]**
 - **Sustained**: The complaint or allegation is true and the action taken was not consistent with department policy.

⁷ *O'Brien v. Mun. Court*, 10 Mass. App. Ct. 851, 407 N.E.2d 1297 (1980)

⁸ M.G.L. c. 149, s. 19B

⁹ *Baglioni v. Chief of Police of Salem*, 421 Mass. 229, 656 N.E. 2d 1223 (1995).

- **Misconduct Not Based on Complaint:** The employee was guilty of misconduct not part of original complaint.
- **Not Sustained [Inconclusive]:** There is insufficient proof to confirm or refute the allegation.
- **Unfounded:** The allegation or complaint is demonstrably false or there is no credible evidence to support it.
- **Exonerated:** The action taken was consistent with department policy.

Every complainant and involved employee shall be promptly notified as to the final results of the investigation. **[52.2.4 c]**

N. Confidentiality of Internal Affairs

At the completion of any IA investigation all materials relevant thereto will be stored in a locked cabinet in the Chief's office so as to maintain that investigation's confidentiality. **[52.1.2]** No statement regarding an IA investigation will be made or issued to the media unless the charges have been sustained and action has been taken or initiated against the officer or employee. This will only be done with the Chief's permission. **[52.1.1]**

O. Investigative File Storage

A complete file of records on the investigation of all citizen and internal complaints shall be kept in the Chief's office. Access to those records shall be limited the Chief of Police and Deputy Chiefs. These files shall contain supporting investigative information. These files shall be treated as confidential investigative files and shall include what disciplinary action was taken if any. **[52.1.2; 26.1.8]** Officers will have access to their administrative files on all completed investigations.

The Division of Police Standards may audit all records related to complaints, investigations, investigative reports, and personnel records pursuant to the rules and regulations set by POST. Employees should permit access for these audits.

P. Liaison with District Attorney

Any IA investigation that may, or does, result in criminal charges being brought against an officer shall require the District Attorney's office to be appraised of the case for the purpose of advising on legal issues and ultimate prosecution, if necessary. Contact shall be made through the Chief or his/her designee.

Q. Relieving Employee from Duty

If an employee's conduct warrants it, any Supervisor may relieve that employee (sworn or non-sworn) from duty for the remainder of his/her shift. The Chief or his/her designee will be notified by phone if this occurs. Examples of conduct warranting such action are:

- Reporting for duty in an unfit condition (i.e. intoxicated);
- Refusal to perform assigned duties;
- Commission of a criminal offense while on or off duty.

Employees shall only be relieved from duty in accordance with M.G.L, c. 31 § 41 and collective bargaining provisions. **[52.2.7]**

R. Appeal Procedures

Appeal procedures for all employees involving disciplinary actions are established by the collective bargaining agreements between the Town and the respective unions. Employees will also be afforded their rights under applicable Massachusetts Civil Service Laws. **[52.2.5] [26.1.6]**

S. Grievances and Control of Records

Employee grievance procedures shall be addressed and filed according to collective bargaining agreements. It shall be the responsibility of the aggrieved employee and union President or designee to coordinate, process, and file their concerns, whether verbal or written, to the appropriate authority as outlined in the CBA. **[25.1.2]**

Grievance records shall be stored and maintained in a secured file cabinet in the office of the Chief of Police. The union should also keep a record of the grievance. Access to those records shall be limited the Chief of Police, Deputy Chiefs, Aggrieved Employee, Mayor, and Arbitrator. **[25.1.2]**

Employees may request to review their file at a time convenient to the Chief of Police or Commander and the requesting employee.

T. POST

On 12/31/20, Governor Charles Baker signed a comprehensive piece of legislation into law titled, ***An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth***. This historic legislation established a new nine (9) member Commission known officially as the ***Massachusetts Peace Officer Standards and Training Commission*** (hereinafter “POST”) which was granted with very broad investigatory, enforcement and licensing powers pertaining to all sworn law enforcement officers and agencies in the Commonwealth. Of particular note, this legislation created a new statute, M.G.L. Chapter 6E, whereby certain Sections of this new law shall have a direct impact on law enforcement agencies across the state pertaining to information that is derived from the complaint investigation procedures of all police departments.

All internal affairs investigations into complaints of misconduct must be completed within one (1) year of receiving the complaint or notice from POST of the complaint being filed. The time to do so may be extended by POST upon a showing of good cause.

Anti-Retaliation Policy – no officer or employee shall discharge an officer or employee, change their official rank, grade or compensation, deny a promotion, or take any other adverse action against an officer or employee or threaten to take such action for providing information to the POST commissions or testifying in any commission proceeding.

Braintree Police Department Weingarten Rights

EMPLOYEES' RIGHT TO UNION REPRESENTATION

Employees have Weingarten rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information that could be used as a basis for discipline or asks an employee to defend his or her conduct.

If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation. Management is not required to inform the employee of his/her Weingarten rights; it is the employee's responsibility to know and request.

When the employee makes the request for a union representative to be present management has three options:

- 1) Stop questioning until the representative arrives;
- 2) Call off the interview; or
- 3) Tell the employee that the interview is called off unless the employee voluntarily gives up his/her rights to a union representative.

Employers will often assert that the only role of a union representative in an investigatory interview is to observe the discussion. The Supreme Court, however, clearly acknowledges a representative's right to assist and counsel workers during the interview.

The Supreme Court has also ruled that during an investigatory interview management must inform the union representative of the subject of the interrogation. The representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress the representative cannot tell the employee what to say, but he may advise them on how to answer a question. At the end of the interview the union representative can add information to support the employee's case.

Braintree Police Department Garrity Warning Form

INTERNAL AFFAIRS/PROFESSIONAL STANDARDS

At this time, I am going to question you about:

This questioning concerns administrative matters relating to the official business of the Braintree Police Department. During the course of this questioning, if you disclose information that indicates that you may be guilty of criminal conduct, neither your self-incriminating statements nor the fruits of any self-incriminating statements you make will be used against you in any criminal legal proceedings.

Since this is an administrative matter and any self-incriminating information you may disclose will not be used against you in a court of law, you are required to answer my questions fully and truthfully. This requirement is set forth in our Braintree Police Department Rules and Regulations, Cooperation with Internal Investigations (Rule 9.13), Testifying at Investigation (Rule 9.15), Insubordination (Rule 7.6), Truthfulness (Rule 6.9), and our departmental regulations requiring employees of this department to comply with all lawful orders.

You are entitled to all rights and privileges guaranteed by the Massachusetts Declaration of Rights, the Laws of the Commonwealth of Massachusetts and the Constitution of the United States, including the right to have legal counsel or union representation present with you during this interview.

Refusal to answer all questions asked is a violation of departmental rules and regulations; you will be subject to separate disciplinary action.

Do you understand what I have just explained to you? _____

Do you have any questions concerning what I have just explained to you? _____

I, _____, by my signature below, affirm that I have been advised of the "Garrity Warning" and have had its meaning explained to me.

Officer's Signature: _____

Date: _____

Interviewer/Investigator: _____

To: _____

From: _____

Date: _____

Subject: Complaint # _____ IA Case # _____

You are hereby ordered, in accordance with the Braintree Police Rules and Regulations, to participate in this investigative. You are required to answer all questions concerning the performance of your duties, your fitness to perform those duties, and professional responsibilities honestly and truthfully.

This requirement is set forth in the following Braintree Police Department Rules and Regulations:

- Cooperation with Internal Investigations (Rule 9.13),
- Testifying at Investigation (Rule 9.15),
- Insubordination (Rule 7.6),
- Truthfulness (Rule 6.9), and
- The Braintree Police Departmental regulation requiring employees to comply with all lawful orders.

You have a right to remain silent about conduct or behavior that would tend to incriminate you in a criminal matter. The invocation of your right against self-incrimination, under either the 5th Amendment to the US Constitution and/or Article 12 of the Massachusetts Declaration of Rights, is sufficient to comply with the order to participate; however, it must be done on a question-by-question basis as it relates to the allegations of criminal activity.

You may be able to comply by asserting your 5th Amendment privilege against self-incrimination and waiving your Article 12 Mass. Declaration of Rights privilege. If you choose this option, you are waiving your right to transactional immunity and you are required to participate by answering questions or submitting a detailed report. However, the answers you provide to the allegations against you and any evidence derived from those answers cannot be used against you in a criminal proceeding. Conversely, criminal proceedings may be based upon evidence obtained from other independent sources.

Failure to participate in the interview or submit a report absent an assertion by you of your constitutional privilege(s), is considered failure to obey and comply with an order and could result in you receiving disciplinary action.

PLEASE READ, CHECK THE APPROPRIATE BOX, SIGN AND DATE THIS STATEMENT.

I wish to assert my constitutional protections under the 5th Amendment of the United States Constitution and Article 12 of the Massachusetts Declaration of Rights.

I wish to assert my 5th Amendment right against self-incrimination under the United States Constitution, but agree to waive my rights under Article 12 of the Massachusetts Declaration of Rights. I will answer questions and/or submit a report as required, but the contents of that report and any evidence derived therefrom cannot be used against me in a criminal proceeding. However, I understand that a criminal proceeding can be instituted against me based upon evidence obtained from other independent sources.

Employee Signature: _____ Date: _____

Witness Signature: _____ Date: _____



Braintree Police Department

Training and Recruitment

282 Union Street • Braintree, Massachusetts 02184

Main 781-794-8600 • Fax 781-794-8671



Braintree Police Department Complaint against an Employee

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Complaint Number _____

Braintree Police Department policy requires that **all** complaints against department personnel be investigated. It is very helpful if your complaint is reduced to writing. A Supervisor will be assigned to investigate your complaint upon its submission. Your investigator will interview you, all applicable employees and witnesses.

Upon the investigation's conclusion, your investigator will summarize his/her findings in writing and make a recommendation(s) to the Chief. Depending on the circumstances, there could be a hearing at which all parties may be present. Regardless of whether or not there is a hearing, a decision will be rendered and the Chief will inform you of the results of the investigation.

Instructions to Register a Complaint: Please provide the information requested below. Please write neatly.

Name: _____ DOB ___/___/___

Address: _____

Telephone: work (____) cell (____)

Email address: _____

Date and time of Incident: _____

Location of Incident: _____

Officer/Employee's name, badge #, or description if unknown:

Witnesses (*Please provide the name, address and telephone number for each witness*):

Signature of person filing complaint:

Printed name and signature of Parent/Guardian if complainant is under 18 years old:

Signed under the pains and penalties of perjury.

For Department Use Only:

Received by: _____ Date and time: _____

Received by: _____ Date and time: _____

Received by: _____ Date and time: _____

Received by: _____ Date and time: _____