



Apex Police Department General Order



Title Personnel Complaint Investigation		Order Number 302-20
Effective Date: February 7, 2020	Amends: 302-14	
CALEA Standard: 26.1.3, 26.2.1, 26.2.2, 26.2.3, 26.2.4, 26.2.5, 26.3.1, 26.3.2, 26.3.3, 26.3.4, 26.3.5, 26.3.6, 26.3.7, 26.3.8	Rescinds:	
Reference: GO 604 - Inspections GO 303 – Awards and Commendations GO 310 – Disciplinary System and Complaint Resolution Procedures GO 311 – Personnel Early Warning System Town of Apex Personnel Manual	Pages: 14	
Forms: F302 - Allegation of Misconduct Form F302a - Allegation of Misconduct Statement F302b - Garrity Rights F302c- Complaint Investigations Cover Sheet F302d – Employee Notice of Warnings, Rights and Responsibilities F302e – Employee Notice Post Investigation F302f – Quality of Service Inquiry (QSI)		

Personnel Complaint Investigation

Purpose

To define the process for accepting, processing, reporting and investigating complaints concerning allegations of misconduct, and inquiries regarding the quality of service provided by employees of the Apex Police Department.

Policy

The establishment of procedures for investigating complaints and allegations of employee misconduct is crucial to demonstrate and protect the department’s integrity. It is the policy of the Apex Police Department to accept all complaints and inquiries regarding the quality of our service. Each complaint of misconduct or quality of service inquiry, will be investigated fairly and

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impartially to determine the validity of the allegations and any follow up actions that may be justified, in a timely and consistent manner.

All complaints; allegations of violations of written directives, laws, and statutes; and allegations of misconduct will be investigated using the process set forth in this policy. All employees and other persons regularly associated with the department (i.e. Explorer, volunteer, etc.) are responsible for reporting complaints; allegations of violations of written directives, laws, and statutes; allegations of misconduct; and acts of misconduct by other employees as outlined in this General Order.

Definitions

Administrative Investigation - Administrative Investigations are initiated at the direction of the Chief of Police and may be used to review an internal policy, practice, operation or function of the department and/or the actions of any employee. Violations that are identified during an Administrative Investigation may be investigated under a separate Internal Affairs Investigation case number or contained in the original Administrative Investigation case number.

Complaint – An expression of displeasure with the actions or services of the department and/or an employee, or an allegation of misconduct or wrong doing; an allegation identifying conduct which, if sustained, would constitute a violation of a written directive, law, statute, etc.

Criminal Investigation - An investigation into allegations of employee misconduct that may be a violation of local, state or federal law.

Demeanor Complaint - Less serious allegations that warrant an investigation but do not rise to the level of a misconduct allegation. Examples of less serious allegations include the use of foul or discourteous language, rudeness, or other acts, which would not routinely result in serious disciplinary action such as demotion or dismissal.

Internal Affairs Function – The internal review and investigation of a complaint and/or allegation of violations of written directives, laws, statutes and allegations of misconduct. The Internal Affairs Function is commanded and coordinated by the Deputy Chief of Police and includes, the Professional Standards Unit and any supervisor who is assigned to investigate or review an allegation as outlined in this General Order.

Internal Investigation - A non-criminal investigation into allegations of employee misconduct which are not criminal in nature. It includes the process of receiving and investigating:

- Reports or complaints alleging employee misconduct
- Incidents of which supervisory personnel are aware and believe warrant investigation

Lawsuit/Claim Investigation - Lawsuit/Claim Investigations are initiated at the direction of the Chief of Police pursuant to a lawsuit or legal/insurance claim and may be used to review an internal policy, practice, operation or function of the department and/or the actions of any

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employee. Violations that are identified during a Lawsuit/Claim Investigation may be investigated under a separate Internal Affairs Investigation case number or contained in the original Lawsuit/Claim Investigation case number.

Malfeasance – An intentional act of doing something that should not be done with the intention of causing harm. (See “Misfeasance” below).

Misconduct – The knowing and/or intentional violation of a written directive, law, statute or other regulation.

Misconduct Allegations - Allegations that have the potential of damaging the reputation of the department or its personnel and include, but are not limited to, the following:

- Corruption
- Improper or excessive use of force
- Breaches of an individual's civil rights
- Violations of Federal and/or State laws or local ordinances
- Violations of Town of Apex or departmental standards of conduct

Misfeasance – An improper or unlawful act that, if the act was done correctly, would have been proper and lawful, but results in harm to another. Misfeasance is careless, reckless or accidental in nature. Malfeasance and Misfeasance are comprehensive terms and include any wrongful conduct that affects, interrupts or interferes with the performance of official duty. (SOURCE: www.uslegal.com).

Quality of Service Inquiry (QSI) – A request for information or clarification of the actions of an employee, a procedural issue or an issue of police application of a statute, law, ordinance or regulation.

Supervisory Investigation - An investigation conducted by the supervisor of an employee against whom a complaint has been lodged.

Procedure

1. The department will receive and investigate all complaints related to employee conduct in a manner that will provide citizens with a fair and effective avenue for redress against an employee or the agency as a whole; while protecting employees from false allegations and ensuring all accused employees are treated in a proper and consistent manner.
2. All employees and other persons regularly associated with the department (i.e. Explorer, volunteer, etc.) are charged with the responsibility of reporting complaints, such as but not limited to:
 - Allegations of violations of written directives, laws, and/or statutes
 - Allegations of misconduct and/or acts of misconduct by any other employee

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- Misappropriation of Town funds
 - Substantial or specific danger to public health and safety
 - Gross mismanagement, waste of funds or abuse of authority
3. All complaints, including anonymous complaints, against an employee of the department will be documented and investigated. (26.2.1)
 4. The Deputy Chief of Police is responsible for the department's Internal Affairs function and will oversee the administration and investigation of all complaints, to include all Quality of Service Inquires (QSIs). The Internal Affairs function answers directly to the Chief of Police and is a method of ensuring the professional integrity of the department and its employees. (26.2.3)
 5. All complaints and QSIs made against the department or any employee will be documented and a record will be maintained in accordance with this General Order. (26.2.2)
 - Internal Affairs files and documents relating to complaints, to include QSIs, are confidential and are only accessible by authorized personnel.
 - These files will be maintained by the Office of the Chief of Police.
 - The supervisor who receives the initial allegation and determines it is associated with the employee's Quality of Service will:
 - Code the contact in CAD as a QSI inquiry
 - Complete Form F302f and add notes to the CAD report to detail why the allegation should be reclassified to a QSI.
 6. An internal investigation may be conducted based upon a complaint of behavior, action or inaction of an employee while on-duty, on an extra-duty assignment, while in any part of the department uniform or in a department vehicle, or in any way being a representative of the department. Off-duty behavior that plainly implicates the department/officer effectiveness or results in a negative public perception may be subject to an internal investigation.
 7. Anyone filing a complaint concerning a potential violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Employees who make allegations that are not substantiated and, which were found to have been made maliciously or with knowledge that they were false, may result in disciplinary action.
 8. No employee who, in good faith, reports a potential ethical violation will be the subject of any form of retaliation. Any employee who retaliates against a person who has, in good faith, reported a potential violation is subject to further action by the department.

Receiving and Documenting Complaints

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1. Complaints may be made in person, by telephone, or in writing. Anonymous complaints and complaints from citizens who wish their names be held in confidence will be accepted for investigation. (26.2.1)
 - When possible, external complaints (i.e. complaints from the general public or someone who is not an employee of the Apex Police Department) will be referred to the on-duty supervisor.
 - The complainant will be asked to complete Form F302 - *Allegation of Employee Misconduct* and Form F302a – *Allegation of Misconduct Statement*.
 - If the complainant refuses, the supervisor accepting the complaint will complete the form and will indicate on the form the reason, if any, for the refusal.
2. Any employee wishing to make a complaint on another employee will do so internally to the appropriate Division Commander or the Office of the Chief of Police, as follows:
 - Employees will refer their complaint to the most appropriate Division Commander.
 - If the complaint involves a Division Commander, the employee may report the complaint to the Deputy Chief of Police, or directly to the Chief of Police.
 - If the complaint involves any type of workplace harassment, the employee may report his/her complaint directly to the Human Resources Director or Town Attorney, in accordance with the Town of Apex Personnel Manual. (26.1.3)
 - Form F302 - *Allegation of Employee Misconduct* and Form F302a – *Allegation of Misconduct Statement* will be used to file the complaint.
3. The person receiving a complaint, completing or assisting the complainant in completing Form F302 - *Allegation of Employee Misconduct Form* and Form F302a – *Allegation of Misconduct Statement*, will note any attempts to resolve the complaint, attach any additional documentation, and forward the form and all related documentation to the Professional Standards Sergeant, no later than the next business day.
 - If the complaint is minor in nature and can be investigated and concluded, the supervisor doing so will document all circumstances and investigative steps in a memorandum. The memorandum will be forwarded along with the appropriate forms to the Professional Standards Sergeant as outlined above.
4. All complaints will be entered into the approved database by the Professional Standards Sergeant.

Quality of Service Inquiry (QSI)

1. QSIs may be handled by a supervisor at the rank of Corporal or higher.
 - If the matter is determined to be a QSI, it is not considered a “complaint” for the purpose of this General Order.

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- Form F302f - *Quality of Service Inquiry (QSI)* will be used to document the QSI.
 - Before the end of shift, the supervisor or command officer conducting the QSI will forward form F302f - *Quality of Service Inquiry (QSI)* to the Professional Standards Sergeant for review.
 - The Deputy Chief of Police will provide a summary of QSIs to the Chief of Police through the division's monthly report.
2. If the QSI review determines that a violation of written directives and/or any form of misconduct occurred/is likely to have occurred, the matter will be investigated as a "complaint" in accordance with this General Order.
- Form F302f-19 - *Quality of Service Inquiry (QSI)* and any required complaint documentation will be forwarded to the Professional Standards Sergeant for placement into the complaint file.

Notification - Internal

1. The Deputy Chief of Police will notify the Chief of Police of all complaints received, the status and recommended actions. (26.3.2)
- An immediate notification will be made as outlined in General Order 711 – *Notification Matrix*.
 - A summary of complaints will be reported to the Chief of Police through the Professional Standards Unit Monthly Report.
 - The Deputy Chief of Police will ensure timely notification of all complaints received against the agency or its employees. Additionally, The Deputy Chief of Police is responsible for regular communication with the Chief of Police regarding all new complaints received and the status of complaints being investigated.
2. Employees assigned to conduct an internal investigation are authorized to forego the normal chain of command and report directly to the Chief of Police, or his/her designee, on matters pertaining to the investigation.

Assignment

1. Unless determined otherwise by the Chief of Police, complaints will be assigned for investigation/review as follows:
- Administrative Investigations – Generally, will be assigned to the Deputy Chief of Police (26.3.1)
 - Criminal Allegations – Generally, will be referred to the Criminal Investigation Division Commander, the North Carolina State Bureau of Investigation, the Wake County District Attorney or some other investigative agency with appropriate jurisdiction (**NOTE:** Criminal investigations are conducted separately from internal investigations)

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- Demeanor – Generally, will be assigned to a Lieutenant, Civilian Manager or the employee's direct supervisor (26.3.1)
 - Lawsuits/Claims – Generally, will be assigned to the Deputy Chief of Police, in conjunction with the Town Attorney (26.3.1)
 - Misconduct Allegations – Generally, will be assigned to the Deputy Chief of Police (26.3.1)
 - **NOTE:** Assignment may be delegated to another level of supervision if approved by the Chief of Police.
2. The Chief of Police, Deputy Chief of Police, or another command officer as designated, will investigate allegations against command staff personnel. Allegations against the Chief of Police will be directed to the Town Manager.

Receipt of Complaint/Investigation Procedures

1. If a complaint is received by the Communications Center or Records Unit in person or by telephone, the Telecommunicator/Records Clerk will:
 - Notify the on-duty supervisor or another available and appropriate supervisor
 - Advise the complainant which supervisor he/she has been referred to and how to contact that supervisor, if not immediately available
2. Regardless of the method in which a complaint was received, the on-duty supervisor or any other supervisor will initiate the investigation as provided in this directive.
3. Verification that the complaint has been received for processing will be provided to the complainant, which will include the preliminary status and provide further contact information. (26.3.4)
 - If the complaint was received in person or by phone, verification may be done verbally by the supervisor accepting the complaint or through the completion of Form F302 – *Allegation of Misconduct*.
 - If the complaint was received by some other method or if so determined by the Administrative Division Commander, Deputy Chief of Police or Chief of Police, verification may be completed by another method (i.e. mail, email, phone, etc.).
4. Complaints will be fully investigated and will include interviewing the involved employee(s), witnesses, and complainant, as well as securing all relevant evidence where appropriate.
 - If witnesses and/or evidence are available, the supervisor will take all necessary steps to protect the scene, identify witnesses and safeguard evidence, including Mobile Video Recording (MVR), MDT/MCTs or other devices.

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- The assigned supervisor will conduct a thorough, fair and impartial investigation of alleged or suspected misconduct, while maintaining the confidentiality of the investigation.
 - Follow up on all complaints will include interviewing witnesses, the complainant, and any other persons identified as having information relevant to the complaint.
5. Upon assignment of an internal affairs investigation, or at the most appropriate time during the investigation, the Professional Standards Sergeant, or other appropriate supervisor, will notify the employee, who is the subject of the complaint, in writing, of the employee's rights and responsibilities relative to the investigation. **NOTE:** Demeanor Complaints are not considered "Internal Affairs Investigations" for the purposes of this section. (26.3.5)
- The employee will be notified prior to any official interview. The employee notification will include:
 - The nature of the allegation(s)
 - The type of investigation
 - The employee's warnings, rights and responsibilities relative to the investigation
 - Notice to the employee will be in writing using Form F302b – *Garrity Rights*
6. The employee will be interviewed at the most appropriate point in the investigation.
- During an administrative interview, the employee is not allowed the presence and/or assistance of counsel or of anyone else.
 - Interviews may be recorded at the discretion of the investigating supervisor, Deputy Chief of Police or Chief of Police.
 - Employees subject to any complaint or internal investigation interview must answer all questions fully and truthfully. Any dishonesty, deception or failure to fully disclose may result in additional departmental charges and/or disciplinary action up to and including dismissal.
7. During the course of an internal investigation, the following procedures may be used, with the approval of the Chief of Police, when the actions are material to a particular internal investigation being conducted by the department:
- A new or existing photograph of an employee may be taken/shown to a witness for purposes of identification (26.3.6)
 - Employees may be directed to participate in a line-up if it is used solely for administrative purposes (26.3.6)
 - Employees, complainants and witnesses may be directed to participate in an examination designed to detect deception (26.3.6)
 - The questions asked of an employee will be limited to those that are narrowly related to the performance of the employee's official duties

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- An employee may be requested to submit financial records or disclosure statements as permitted by law (26.3.6)
 - An at-the-scene, contemporaneous identification (show-up) may be performed
 - An employee may be directed to undergo an Intoximeter or other breath test, blood, urine, psychological, medical, laboratory and/or any other examination(s) not prohibited by law if it is believed that such an examination is pertinent to the investigation (26.3.6)
 - All employees are subject to reasonable suspicion and other testing (SOURCE: Town of Apex Personnel Policy Manual)
 - Failure to submit to required medical/physical examinations or tests when ordered is insubordination and grounds for disciplinary action.
8. Pursuant to General Order 604 – *Inspections*, property issued by the department or under department control/ownership is subject to inspection and retrieval at all times.
 9. An internal investigation of any nature will be conducted independently of any other investigation. The internal investigation may proceed concurrently with another investigation (criminal or otherwise) or held in abeyance until the other investigation has been completed.
 10. Investigations should be completed within seven days of assignment. Extensions of up to an additional two weeks may be granted by the Professional Standards Sergeant. Extensions past 30 days from assignment require the approval of the Deputy Chief of Police. (26.3.3)
 - If the investigation takes longer than 30 days, the Deputy Chief of Police or designee will provide a periodic status report, verbally or in writing, to the complainant and will document the status report in the investigative file. (26.3.4)
 11. Upon completion of the investigation, the assigned investigator will submit the following to the Deputy Chief of Police through the chain of command:
 - All documents and evidence relating to the investigation
 - A summary report (memorandum) of the allegation and investigation
 - Recommendations for further investigation or other disposition of the case
 12. The Deputy Chief of Police will review the investigation, ensure it is thorough and complete, and if appropriate submit his /her recommendations, and forward the investigative package to the Chief of Police for review.

Conclusion of Investigation

1. The standard of proof for an internal review/investigation is a “fair preponderance of the evidence.” (SOURCE: IA Promising Practices Guide, p 90)
2. Recommendation:

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- Subsequent to a determination of “sustained,” the Deputy Chief will make a case disposition recommendation. Recommendation(s) may include:
 - Supervisor/Employee Counseling Session
 - Remedial Training
 - Professional Counseling
 - Performance Improvement Plan
 - Fitness for Duty Examination
 - Invoking the Town of Apex Disciplinary System to include:
 - Written Warnings or Final Written Warning
 - Suspension
 - Demotion
 - Dismissal
 - Other, as appropriate for the specifics of the case
 - Criteria for the recommendation should be based upon the specific facts of the situation/case, any past sustained Internal Affairs investigations or similar actions on the part of the employee, or any information deemed applicable
3. The Chief of Police or designee will make a “Conclusion of Fact” based upon the complete investigative file. Conclusions of Fact include: (26.3.8)
- *Sustained* – A final disposition where the allegation is deemed true
 - *Not Sustained* – A final disposition where there is not enough evidence to confirm or refute the allegation
 - *Exonerated* – A final disposition where the allegation is deemed true; however, the employee's action(s) was/were justified, lawful, and proper
 - *Not Provable* – Evidence was insufficient to clearly prove or disprove the allegation
 - *Unfounded* – A final disposition where the allegation is deemed false
 - *Misconduct Not Based on Original Complaint* – Misconduct was discovered during the internal investigation; however, it was not based upon the original complaint
 - *Policy Failure* - The allegation is true; however, the action of the employee was consistent with department policy
 - *Training Failure* - The allegation is true; however, the action of the employee was consistent with training
 - *Supervisory Failure* - The allegation is true; however, the action of the employee was consistent with direction from a supervisor
 - *Action Was Commendable* – The employee’s action was proper and lawful and should be considered for recognition pursuant to General Order 303 – *Awards and Commendations*
4. Discipline arising out of an Internal Investigation will follow the Town of Apex policies, General Order 310 – *Disciplinary System and Complaint Resolution Procedures* and other applicable written directives.

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- All discipline will be imposed through the Office of the Chief of Police; command officers and supervisors are not authorized to impose disciplinary action unless at the direction of the Chief of Police.
 - **EXCEPTION:** Members of the Executive Staff working in the role of Acting Chief of Police may immediately suspend an employee in compliance with the Town of Apex Personnel Policy Manual and after discussing the employee's actions with the Chief of Police.
5. At the conclusion of the investigation, the Chief of Police, Deputy Chief of Police, employee's Division Commander or designee will provide notification of the results of the investigation, verbally or in writing, to the complainant and the involved employee(s). (26.3.4)
 - The specificity of this notification will be at the discretion of the Chief of Police in compliance with North Carolina General Statute 160A regarding privacy of employee personnel records.
 6. Notification will be made to the North Carolina Criminal Justice Education and Training Standards Commission, Criminal Justice Standards Division (CJSD), when required pursuant to the North Carolina General Statutes and/or the North Carolina Administrative Code.
 7. All notifications will be documented in the investigative file.

Relief from Duty (26.3.7)

1. An employee may be relieved from duty at the discretion of the Chief of Police and in accordance with the Town of Apex Personnel Policy Manual.
2. Leave with or without pay may be instituted to investigate any of the following:
 - Alleged violation of Federal and/or State laws or Town ordinances
 - Alleged violation of town or departmental rules, regulations or policies
 - When the employee is party to a civil suit or other non-criminal proceeding not arising from the scope of his/her duty, if the case casts substantial doubt on the employee's ability to satisfactorily perform his/her normal duties or results in a lack of public confidence in the delivery of Town services if the employee were to remain working
3. A supervisor may immediately suspend an employee only under the most serious circumstances where immediate action is necessary. Suspension may be appropriate under the following conditions:
 - The employee reports for duty or is on duty, visibly impaired and unable to properly perform his/her required duties
 - The employee reports for duty or is on duty and exhibits behavior of a nature that the supervisor reasonably determines that the employee would be unable to properly perform his/her required duties

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- The employee reports for duty or is on duty and exhibits behavior of a nature that the supervisor reasonably determines that the employee would be unsafe to him/herself or another person
4. If possible, the supervisor will contact the appropriate Division Commander, Deputy Chief of Police and Chief of Police, through the chain of command, for direction before a suspension is imposed.
 5. If a supervisor immediately suspends an employee, he/she will notify the Chief of Police, through the chain of command, as soon as possible and will fully document the circumstances.
 6. Employees implicated in investigations may be placed on administrative duty/leave pending completion of the investigation and any necessary medical and/or physical exams.
 - Administrative duty/leave will be for a period of time as deemed appropriate by the Chief of Police or his/her designee, and will be without loss of pay or benefits.
 - The assignment to administrative duty/leave will not be interpreted to imply or indicate that the employee has acted improperly.
 - While on administrative duty/leave, the employee will remain available at all times, should he/she be needed for official interviews and statements regarding the incident and will be subject to recall to full duty at any time.

Confidentiality

1. Records pertaining to complaints against the department or its employees and any documentation resulting from internal investigations will be maintained by the Office of the Chief of Police, in a secure file that is separate from the department's central records system and personnel files. The release of such information will be in accordance with Apex Police Department General Orders and North Carolina General Statute. (26.2.2)

Internal Investigations by Other Agencies

1. Representatives from other law enforcement/governmental agencies who are conducting an internal or administrative investigation of an employee on behalf of their agency may be allowed to interview a department employees if that interview is deemed pertinent to their investigation by the Deputy Chief of Police and/or Chief of Police.
 - All such requests will be referred to the Deputy Chief of Police for review and determination.
 - All interviews by other agency representatives of department employees should be conducted at an Apex Police Department facility, during the employee's regular working hours unless approved by the Deputy Chief of Police and/or Chief of Police.

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- At the direction of the Deputy Chief of Police and/or Chief of Police, a department supervisor may be present during the interview to assist the employee.
- Any written statements will be reviewed by the Deputy Chief of Police and/or the Chief of Police prior to being submitted to the other agency.

Criminal Investigations

1. At the request of the Chief of Police, the department's Criminal Investigation Division (CID), the North Carolina State Bureau of Investigation (SBI), the Wake County District Attorney or any other appropriate agency with jurisdiction may conduct a criminal investigation arising from an internal investigation.
 - The department will maintain contact with the District Attorney's Office for necessary legal advice and assistance with case preparation.
 - In all instances, the internal investigation and the criminal investigation will be conducted separately.
 - The Town Manager will be kept informed of any criminal investigations.
2. Employees are entitled to an attorney in cases of alleged criminal misconduct.
3. If a criminal investigation has been initiated, the administrative/internal investigation will be suspended, if possible, until the criminal investigation has been concluded.

Community Outreach

1. Information regarding procedures for registering complaints or complimenting the department or its employees will be made available to the public through the media, community services programs, the Town of Apex website or another method as authorized by the Chief of Police. (26.2.4)

Annual Review (26.2.5)

1. Annually, the Deputy Chief of Police will review the activities of the Internal Affairs function and prepare a statistical summary of data related to the investigation of complaints against employees to identify, at a minimum, the following:
 - Patterns or trends that may indicate potential training needs
 - Patterns or trends that may require policy modification
 - Patterns or trends that are revealed in the context of internal investigations
2. The review will be completed and submitted to the Chief of Police no later than January 31 of the year following the period subject to the review.
 - This date may be extended with the approval of the Chief of Police.

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3. The statistical summary will be made available to the public through the media, community services programs or another method as authorized by the Chief of Police.
 - Information is made available to department employees via departmental written directives and other reports.
4. By tracking and reviewing complaints, the department can evaluate the types of offenses that are most frequently the subject of an investigation and identify patterns of behavior that gave rise to the complaints.
 - This information may be used to revise department policies, training, equipment, etc.
 - This information may also be used pursuant to General Order 311 – *Personnel Early Warning System*.

Text in “Green” denotes a significant change in policy

BY ORDER OF:



John W. Letteney
Chief of Police