

**CITY OF FERGUSON
OFFICE OF THE CHIEF OF POLICE**

Index as:

Allegation of Employee Misconduct
Chief of Police, Complaint Responsibility
Citizen Complaints
Complaint Classifications
Complaints by Citizens
Constitutional Rights, Employees
Allegation of Employee Misconduct Form
Advice of Rights – Internal Investigations Form
Internal Affairs
Internal Investigations

**ALLEGATIONS OF EMPLOYEE MISCONDUCT
INTERNAL AFFAIRS INVESTIGATIONS**

301.00 PURPOSE

The purpose of this General Order is to establish procedures for the acceptance and investigation of complaints and allegations of employee misconduct, misfeasance, malfeasance, and nonfeasance by employees of the Ferguson Police Department. The integrity of the police department depends on the personal integrity and discipline of each employee. In order to insure that integrity, it is necessary to promptly and thoroughly investigate suspicions or allegations, from whatever source, of misconduct by employees of the Ferguson Police Department. At the same time, in the interest of fairness and effectiveness in police operations, the reputation of innocent members must be protected from erroneous (mistaken or falsified) reports and accusations. The Ferguson Police Department has established a system of internal review to accomplish this goal. It is the policy of the Ferguson Police Department to investigate all complaints of employee misconduct arising from the public or within the department.

301.01 DEFINITIONS

Administrative Report – An internal investigation report on a department employee for an alleged violation of any law, statute, general order or policy.

Complaint – Any allegation on an act or failure to act, which if true, breaches a law, statute, general order or policy of the employing agency; which comes from any source, identified or anonymous.

Professional Standards Inspector- The command level officer so designated by the Chief of Police.

301.02 POLICY

Reporting of Complaints, Allegations, Misconduct: All minor infractions of Departmental Orders or Rules will be resolved by Lieutenants or above. Any allegations involving the possible commission of a criminal offense, misconduct, neglect of duty, or other violation of Departmental Orders or rules must be reported to the Office of the Chief of Police. Any supervisor or commanding officer that first receives information of an alleged violation, even when it is believed to be unfounded or false will make this report.

- A. Complaints shall be accepted from any source, whether made in person, by mail or over the telephone, provided the complaint contains sufficient factual information to warrant an investigation. Individuals are encouraged to submit their complaints in person in order to obtain as complete a report as possible after the incident. In cases in which the complainant cannot file the report in person, departmental personnel may visit the individual at his or her home, place of business or hospital in order to complete the report. Whenever possible, a complaint should be reduced to writing. Written complaints do not have to be signed by the complainant.
- B. All complaints, written or oral, anonymous, signed, or unsigned will be reviewed by the Chief of Police to determine if sufficient evidence exists to warrant further investigation.
- C. While encouraging the filing of legitimate complaints against officers and other employees of the Ferguson Police Department, as means by which they can be held accountable to the public, the Department simultaneously seeks to hold members of the public responsible for the filing of false and malicious allegations against police officers. In cases of this nature the complainants will be informed that appropriate legal proceedings will be instituted to remedy such actions.
- D. The Chief of Police will direct which complaints will be assigned for investigation by line supervisors and which will be investigated by Lieutenant or above. When the Office of the Chief of Police is closed, all complaints will be referred to an on-duty shift commander. The shift commander will have a sergeant interview the complainant and complete the Complaint Form. This form will be forwarded to the Office of the Chief of Police before the supervisor's end of their tour of duty. When a complaint is serious in nature, the shift commander will immediately notify the Chief of Police or the Assistant Chief of Police.
 - 1. The criteria for assignment of the investigation of the complaint to line supervisors may include minor infractions such as, improper performance of duty alleged rudeness on the part of the officer, tardiness, or insubordination.
 - 2. The criteria for assignment of the investigation of the complaint to Lieutenants or above may include allegations of corruption, brutality, misuse of force, breach of civil rights, and criminal misconduct.
 - 3. All complaints received by the department by any element, will be forwarded to the Office of the Chief of Police where they will be reviewed to determine

investigative responsibilities. The complaint will be recorded in the complaint log, assigned a case number and then distributed for investigation by Chief of Police or his/her designee.

- D. In all cases, investigators assigned internal investigations will report directly to the Chief of Police.
- E. Written Complaints: All citizen complaints will be investigated. Signed complaints will be recorded on the Allegation of Employee Misconduct Report Form. Unsigned complaints will be recorded on a department memorandum form. All Misconduct Reports or memorandum complaints will be forward to the Chief's Office as soon as received. Complainants will be provided with a completed copy of the Allegation of Employee Misconduct report.
- F. Oral Complaints: Oral complaints, anonymous telephone complaints, and unsigned complaints and letters will be referred to the Chief of Police as soon as received. An "Allegation of Employee Misconduct Report" will not be immediately prepared. Instead, the Chief of Police will conduct a preliminary investigation to determine if there exists sufficient evidence to warrant further investigation. When such evidence or the likelihood of a possible procedural violation is established, an "Allegation of Employee Misconduct Report" will be prepared and established procedures followed in the matters of investigation, report and recommendation. If the preliminary investigation reveals that the information provided by such anonymous telephone call or unsigned letter does not merit nor warrant formal investigation, the information, with the approval of the Chief of Police, will be filed in a pertinent information file, and no other action will be taken, unless at a later date, additional information is forthcoming to strengthen the original information and/or justify a formal investigation being conducted.
- G. Resolved Complaints: It is understood than some complaints received in person or over the phone and can be resolved at the platoon level. These complaints are generally minor in nature, the result of misinformation, misunderstanding or miscommunication. They may be unfounded or valid in some cases. Quite often the person making the complaint does not want action but only to inform someone in management. An example might be rudeness on a traffic stop. When a supervisor receives a complaint in person or over the phone and the complainant does not wish to make a formal written allegation nor desires further action and only if the complaint is minor in nature the supervisor may resolve the matter with no further action beyond questioning/counseling the employee. In either event, the complaint must be documented in the manner described in 301.02 (F).

301.03 COMPLAINT RECIPIENT RESPONSIBILITY

Each member of the Department shall perform the duties and assume the obligations of their rank in the reporting and investigation of complaints or allegations of misconduct against members of the Department. All members shall cooperate fully with any other member of the

Department conducting such investigations. The conduct and documentation of the investigation shall be carried out as set forth in this order. It is the responsibility of the department member taking the complaint to:

- A. Courteously and promptly record any complaint made by a citizen against any officer of the department. Officers may attempt to resolve the complaint, but will never attempt to dissuade any citizen from lodging a complaint. Officers will follow established Department General Orders for processing complaints and will notify the on duty supervisor / commander of the complaint.
- B. Make arrangements for the complainant to appear personally at the police department so that a statement can be obtained. If the complainant requests, the investigative interview may be held outside of a police facility at a location mutually agreeable to the two parties. If the complainant is unable or unwilling to come to the station to file a complaint, the supervisor / commander will obtain the name, address, phone number, nature of complaint and forward said information in memorandum form to the Chief of Police for further action.
- C. An Allegation of Employee Misconduct Report Form 056 must be completed by the supervisor if the complainant wishes to lodge a formal complaint even if they will not respond to the station. The signature of the complainant is not required.
- D. Complaints that deal solely with innocence or guilt of a complainant involved in a criminal arrest or who has been issued a traffic citation, not involving a violation of departmental rules or an allegation of a law violation against the officer, should not be considered complaints. These matters, therefore, should not be investigated nor should an "Allegation of Employee Misconduct Report" be prepared. These matters should be resolved in court.

301.04 DUTIES OF THE CHIEF OF POLICE HANDLING COMPLAINTS

The Chief of Police shall have sole responsibility for proceeding with serious complaints, including, but not limited to, complaints alleging physical abuse and complaints possibly involving a criminal violation.

- A. Upon receipt of a complaint, the Chief of Police may, at his discretion, refer it to an appropriate commander; or make a preliminary investigation then assign it to the Professional Standards Officer to complete based on the preliminary investigation.
- B. The Chief of Police or the commander assigned to the investigation will acknowledge receipt of the complaint to the complainant within ten working days. The notification should include the name of the person assigned to investigate the complaint and the telephone number of the investigator.
- C. The department member against whom a complaint has been filed and any member who has been relieved of duty, will be notified immediately and will be provided a

written statement of the allegations and the employee's rights and responsibilities relative to the investigation. The exception would be if the department member's knowledge would impede the investigation. The Department member's immediate supervisor will also be notified.

- D. At the completion of the department's investigation, the complainant will be notified in writing of the outcome by the Chief of Police.

301.05 CONDUCT OF INTERNAL INVESTIGATIONS

- A. Internal Investigations will be assigned an Administrative Report number by the Administration Office. This number, the name of the employee involved, nature of the allegation and the name of the investigating officer will be a permanent record in the Office of the Chief of Police. The complainant will be notified of the results of the investigation in writing within 30 days. If the nature and conduct of the investigation is expected to take longer than 30 days, the complainant will receive periodic status reports until the investigation is completed.
- B. Internal investigation reports will be completed within 15 calendar days of being assigned. The investigative time limitation may be extended at the approval of the Chief of Police and will be documented in the final report.
- C. Investigators conducting internal investigations may use any and all investigative techniques and procedures available with the knowledge and permission of the Chief of Police to include:
1. Medical or laboratory examinations;
 2. Photographs of employees;
 3. Participation in a line-up;
 4. Financial disclosure statements;
 5. Instruments for the detection of deception.

NOTE: An employee may be required to submit to a medical or laboratory examination, at the department's expense, when the examination is specifically directed and narrowly related to a particular internal affairs investigation being conducted by the department. An example is the use of this process in determining drug use by employees. An employee may also be required to be photographed, to participate in a line-up and/or submit to a financial disclosure statement when the actions are material to a particular internal affairs investigation being conducted by the department.

301.06 ADMINISTRATIVE INVESTIGATION REPORT

The administrative investigative report for allegations of employee misconduct consists of four parts; summary of the incident; documentation of the investigation; list of charges, specifications and findings; and investigators recommendation.

- A. **SUMMARY** - The incident summary should consist of one or two short paragraphs that identify the officer or officers involved and that describes the act that resulted in the complaint of misconduct.
- B. **INVESTIGATION** - The investigative section of the administrative report is a chronological record of the investigation. All interviews and memorandums should be reflected in this section. **Written statements are required by all complainants and witnesses.** If a written statement is not obtained, the investigative officer will detail the circumstances as to why a statement was not obtained. Investigators should encourage officers to type their responses to questions directed to them during the investigation so they can be easily read by reviewing commanders. The responses may be capsulated in the body of the investigative section by the investigator that prepares the report. All original documents should be attached to the report. Upon completion of an interview with an employee alleged to have committed a violation of any law, policy or procedure, the investigator will ask if there are any witnesses or evidence they would want the investigator to examine in his defense.
- C. **FINDINGS** - Immediately following the investigative report, the list of charges and specifications catalogs the section of the Police General Order Manual and the violation as specified in the General Order, for example:

ALLEGATION A-02-12A, OCCURRED APRIL 25, 2002

Officer John Doe is alleged to have violated General Order 304.02.A.(8), which reads:

“ Will not be neglectful of duty, sleep or loaf while on duty, or be improper in performance of duty, to include: incompetence, failure or unwillingness to render satisfactory service.”

ALLEGATION A-02-12B, OCCURRED APRIL 25, 2002

Officer John Doe is alleged to have violated General Order 304.02.A(4), which reads:

“ Will report for duty at the time and place required by assignment or order and will be physically and mentally fit to perform their duties. They will be properly equipped so that they may immediately assume their duties. Judicial subpoenas will constitute an order to report for duty under this section.”

Additional charges should be listed as Allegation A-02 -12 C, etc.

A detailed explanation of the findings (under the heading FINDINGS) should be listed after each specific allegation. The findings section should clearly define the facts of the investigation and the reasons for the findings.

D. **RECOMMENDATIONS:**

The recommendations should be listed at the bottom of page one (under the heading RECOMMENDATION) and use the following format example:

Allegation A—G.O. 304.02.A(8) - Sustained or Not Sustained.
Allegation B—G.O. 304.02.A(4) - Sustained or Not Sustained

The five classification options are covered in the next section.

301.07 **CLASSIFICATION OF COMPLAINT INVESTIGATIVE REPORTS**

Investigators completing administrative reports will provide a “finding” or conclusion of fact and will specify the allegation(s) which are to be classified in one of the following categories:

- A. **Cleared** - The complaint was not based on fact, as shown by an investigation or the incident complained of did not in fact occur.
- B. **Exonerated** - The action complained of did occur, but the investigation concluded that the actions were reasonable, lawful, and proper.
- C. **Unsupported:** - A complaint has been filed. An investigation cannot proceed due to insufficient information and/or the complainant cannot be contacted. The case may be reopened at a future date, when new or additional information is received.
- D. **Inconclusive** - Insufficient evidence available to either prove or disprove the allegations in the complaint.
- E. **Sustained** - Investigation disclosed sufficient evidence to support the allegations in the complaint. Allegations that are substantiated, or violations that are discovered, shall be cited by the following:
 - 1. Departmental Policies specifically, the order pertaining to departmental Rules and Regulations
 - 2. Official Bulletins
 - 3. Criminal Statutes, if applicable

In any instance when a complaint is finally disposed of as "Unsupported", "Exonerated", or "Inconclusive", records pertaining to the complaint and its disposition will be closed and will be expunged after a period of 90 days except for the initial entry in the Administrative Report Log Book. Records of "Cleared" complaints will be maintained in the chief's administrative files and will be closed records.

301.08 **ALLEGATION OF CRIMINAL LAW VIOLATION**

- A. If a complaint alleges a violation of criminal law, or if during the internal investigation, evidence is obtained to support a criminal violation, the member under investigation (prior to said member being questioned) will be immediately advised of his constitutional rights under Miranda. The member will also be advised that he may be required to answer questions relating to his departmental duties, under penalty of dismissal or other action even though there is a criminal aspect to the case. If a statement is obtained after a member has been advised of his rights, it will be included in both the internal investigation report and the criminal offense report.
- B. If a member refuses to waive his constitutional rights, he will thereafter be advised that for the purposes of the internal investigation, they must answer questions relating to their departmental duties (*Garrity vs. New Jersey*, 385 U.S. 493 (1967)). Failure to do so could result in possible dismissal or other disciplinary action being taken. In the event he thereafter makes a statement after refusing to waive the constitutional rights affirmed by the U.S. Supreme Court *Miranda* decision, that statement will not be used in any criminal investigation, however, the statement will be included in the internal investigative report.
- C. The criminal investigation authorities and prosecuting officials have a right to obtain from the internal files, information regarding the matter under investigation, but those portions of the internal file which include a statement made by an officer after refusing to waive the Miranda rights cannot be used against a department member in a criminal prosecution, although they may be available to the prosecuting authorities for use in prosecution against another person or for such other valid and legal reasons when the prosecuting authorities deem fit. A department member may have counsel present when being questioned with respect to a criminal complaint.
- E. The Chief of Police may require an accused department member to submit to reasonable physical or psychological tests for purposes of determining fitness to perform duties or when such fitness has been called into question by competent authority. The accused department member may also request such tests.
- E. At any time during the course of an investigation, the department member, the complainant, the attorney for either, or any community representative may submit relevant evidence and such information will become part of the investigation and will be investigated.
- F. If a complainant withdraws his complaint, with the approval of the Chief of Police, the investigation may cease. Reports concerning withdrawn complaints will include the investigating officer's opinion, or the complainant's explanation for withdrawing the complaint.
- G. If the investigation reveals that the complaint involving an allegation of a criminal law violation is found to be false and was made with malicious intent, then steps should be taken, whenever possible, to prosecute the complainant for making a false police report.

- H. Internal investigations will proceed without delay, even though there is a criminal investigation or civil litigation in the case, and if necessary, an offense report will be prepared in conjunction with the investigation. If there is a pending criminal investigation or civil litigation, final reports of complaints or commencement of hearings will be delayed only at the request of the prosecutor, City Manager or City Attorney. In those cases where criminal action or civil litigation is pending, the Chief of Police will advise the appropriate prosecutor when the final report is completed.

301.09 EMPLOYEE RELIEVED FROM DUTY DURING INVESTIGATIONS

An officer may be relieved from duty with pay as a temporary administrative action pertaining to an employee's physical or psychological fitness for duty or an action pending disposition of an internal affairs investigation. The authority to relieve an officer from duty must be made by a command level officer in consult with the Chief of Police.

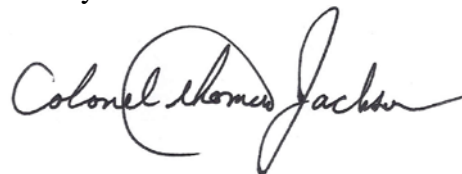
301.10 COMPLAINT AND INVESTIGATIVE RECORDS AND SECURITY

The confidentiality of internal affairs records is important, and proper security precautions will be taken to secure investigative files. A record of all complaints against police department employees and completed internal investigative files will be secured in a locked cabinet in the Administrative Office of the Chief of Police. Officers assigned investigations will be responsible to secure their investigative files in locked cabinets and not left unsecured.

301.11 STATISTICAL ANALYSIS AND PUBLIC DISCLOSURE

The Professional Standards Inspector will compile annual statistical summaries, based upon records of internal affairs investigations.

By order of:

A handwritten signature in cursive script that reads "Colonel Thomas Jackson". The signature is written in dark ink and is positioned above the printed name and title.

COLONEL THOMAS JACKSON
Chief of Police

**FERGUSON POLICE DEPARTMENT
ALLEGATION OF EMPLOYEE MISCONDUCT REPORT**

Date and Time Report Received: _____ IAD File # _____

I. COMPLAINANT

Name _____ Age _____ Sex _____

Home Address _____ Phone No. _____

Business Address _____ Phone No. _____

II. EMPLOYEE INVOLVED IN COMPLAINT

Name _____ Rank _____ DSN _____

Assignment _____

III. COMPLAINT

Date and Time of Incident: _____

Location of Incident: _____

Nature of Complaint: _____

Statement of Complaint:

(Use Continuation if Necessary)

Signature of Complainant _____ Date _____

Reporting Officer _____ Date _____

(CONTINUATION)

Allegation of Employee Misconduct Report

FILE #_____

Page _____ of _____

[illegible]

FERGUSON POLICE DEPARTMENT
City of Ferguson

ADVICE OF RIGHTS
Internal Investigation

I wish to advise you that you are being questioned as part of an official investigation of the Police Department. You will be asked questions related and specifically directed to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the State of Missouri and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges which could result in your dismissal from the Police Department. If you do answer, these statements may be used against you in relation to subsequent departmental charges, but not in any subsequent criminal proceedings.

I have read and fully understand the "Advise of Rights" as it appears above. This information has also been read to me prior to my preparation of my report.

Signature of Officer DSN

Date

Investigating Officer

Date

IA File Number