

Personnel Complaints

1011.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Tuckahoe Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1011.2 POLICY

The Tuckahoe Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local laws; and municipal and county rules, and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1011.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1011.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Informal - A matter in which the Tour Supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Patrol Division Commander, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Patrol Division Commander, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

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1011.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1011.3.3 INTERNAL PERSONEL COMPLAINT

In all cases where a member of the department has cause to file a formal complaint against another member of the department, a TPD115.1 Internal Personnel Complaint, shall be completed and forwarded to the appropriate Division Commander along with any supporting documentation. An Internal Formal Complaint in most instances will be initiated after counseling or corrective interviews have failed to correct the problem, however in some cases it may be necessary to file an Internal Formal Complaint rather than use progressive discipline.

1011.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1011.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other Village facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

When citizens wish to initiate a complaint against a member of the department, a TPD 120 Personnel Complaint Report, shall be completed. A TPD 120A Personnel Complaint Supplemental Report shall be used if additional space is needed.

[See attachment: Personnel Complaint TPD 120 \(pg1\).pdf](#)

[See attachment: Personnel Complaint TPD 120a \(pg2\).pdf](#)

1011.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If

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a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants shall be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1011.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

1011.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1011.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 - 1. The original complaint form will be directed to the Tour Supervisor of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Commander or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.

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1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Tour Supervisor.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Tour Supervisor and the Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Village Clerk's Office and the Tour Supervisor for direction regarding the supervisor's role in addressing a complaint that relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Tour Supervisor, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
1. Making reasonable efforts to obtain names, addresses, and telephone numbers of witnesses.
 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed.
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1011.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES OTHER EMPLOYEES

Whether conducted by a supervisor or a member of the Patrol Division Commander, the following applies to employees:

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the Tuckahoe Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.

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- (g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - 1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after the employee has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 - 2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
- (i) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All employees shall provide complete and truthful responses to questions posed during interviews.
- (k) No employee may be compelled to submit to a psychological stress evaluator examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Labor Law § 735).

1011.6.3 NOTICE OF CHARGES

Any Charges prescribed by law brought against an employee shall be in writing and within the applicable time frame.

1011.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

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Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding shall be provided for each allegation. Evidence - Each allegation shall be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation shall also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition shall be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) shall be attached to the report.

1011.6.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

The Division Commander will investigate the personnel complaint and submit a report of the investigation including a recommendation.

1011.6.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation.

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The Division Commander will, within ten days of receipt of the complaint, forward the complaint, the results of any investigation and when appropriate a recommendation regarding disciplinary action to the Chief of Police.

The Chief of Police will assign a Personnel Complaint number (P.C.#) to every personnel complaint received whether the complaint is internal or otherwise. The numbering system will be sequential, prefaced by the year i.e., P.C.# 99-01, P.C.# 99-02.

In the event of a death, the Homicide Bureau of the District Attorney's Office will be notified as soon as possible. Such notification will be made by the Chief of Police or the assigned Investigator.

1011.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation shall provide the complainant with periodic updates on the status of the investigation, as appropriate.

1011.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Notwithstanding the above, such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1011.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.
- (d) May be on leave without pay for no more than 30 days (Civil Service Law § 75; Village Law § 8-804).

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1011.9 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Tuckahoe Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1011.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1011.10.1 COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1011.10.2 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the

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event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response, or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1011.10.3 HEARING BY BOARD OF TRUSTEES OR MUNICIPAL BOARD

A hearing shall be conducted as prescribed by the rules and regulations of the Board of Trustees or Municipal Board as provided in NY Unconsolidated Law Section 5711-q.

The employee shall be entitled to five days' notice of the hearing and have an opportunity to be heard in his/her defense. The employee has the right to a public hearing and to be represented by counsel (Unconsolidated Law Section 5711-q).

1011.10.4 ADMINISTRATION OF COMMAND DISCIPLINE

- When investigation of a complaint against a department member finds that formal charges may be brought against the member, the Chief of Police may in his/her discretion, offer Command Discipline to the member in lieu of formal charges
- When a decision has been made to offer Command Discipline the Chief of Police will complete a Command Discipline Report (TPD115.2) and schedule an interview with the member for the purpose of presenting the conclusion of the investigation and the proposed penalty.
- The officer shall be allowed reasonable time to make his/her decision. The specific amount of time shall be agreed on prior to concluding the interview.
- The officer will advise the Chief of Police of his/her decision to:
 - Accept the findings and penalty.
 - Decline to accept either the findings or the proposed command discipline and proceed to a hearing on formal charges. [See attachment: Personnel Command Discipline 115.2.pdf](#)

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1011.10.5 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint.

1011.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation should be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to conduct further investigation, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

1011.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1011.13 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a reprimand, withholding of salary, suspension without pay or termination of employment. The employee has the right to appeal using the procedures established by Village Law § 8-806.

1011.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct shall be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee.

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In cases where an individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate, the probationary period may be extended at the discretion of the Chief of Police.

1011.15 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

1011.16 LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

Members who become aware of misconduct concerning corruption, fraud, use of excessive force, criminal activity, conflicts of interest, or abuse by another member relating to their work with the department, or by a person having business dealings with the department relating to those dealings shall, in addition to any requirements in this policy, promptly report it to the Law Enforcement Misconduct Investigative Office (LEMIO) (Executive Law § 75).

1011.16.1 ADDITIONAL CHIEF OF POLICE RESPONSIBILITIES

The Chief of Police shall advise the governor and appropriate members of the legislature within the required period of any remedial action taken against a member in response to the LEMIO's recommendation. The Chief of Police shall also refer complaints that meet the requirements of Executive Law § 75 to the LEMIO (Executive Law § 75).

Attachments

Personnel Complaint TPD 120 (pg1).pdf

TPD120

PURGED FROM PERSONNEL FILE (DATE)_____

VILLAGE OF TUCKAHOE - POLICE DEPARTMENT

P.C.# _____ **PERSONNEL COMPLAINT** I.A.# _____

To: Chief of Police

Report Date/Time: _____

Manner Complaint Taken: { } In Person { } Letter { } Telephone

Complaint Received By: (Officer's Name) _____

PERSONNEL INVOLVED

1. _____ 2. _____ 3. _____

COMPLAINANT NAME: _____ SEX: _____ D.O.B. _____

Address _____ City _____ State _____ Zip _____

Phone: _____

INCIDENT REPORT To be completed by complainant

Date and Time of Incident: _____ Location of incident: _____

Alleged Incident (s): _____

(If additional space is needed continue on TPD120A Supplemental Report)

**Notice: Pursuant to the New York State Penal Law Section 210.45, it is a crime
Punishable as a Class A Misdemeanor to knowingly make a false statement herein.**

Signature: _____
(Supervisor Receiving Report)

Complainant:
Print Name: _____

Signature _____

Complainant Notified { } Date _____

Employee Notified { } Date _____

Personnel Complaint TPD 120a (pg2).pdf

P.C.# _____ PERSONNEL COMPLAINT I.A.# _____

Report Date/Time: _____

Employee Notified { } Date_____

Personnel Command Discipline 115.2.pdf

PURGE FROM PERSONNEL FILE (DATE)

**VILLAGE OF TUCKAHOE -POLICE DEPARTMENT
COMMAND DISCIPLINE REPORT**

P.C. #

I.A. #

PERSONNEL INVOLVED

NAME: _____ RANK: _____ SHIELD# _____

INCIDENT

ALLEGED VIOLATION (S) _____

LOCATION OF INCIDENT: _____ DATE/TIME: _____

CONCLUSION OF FACTS

The investigation of the above named incident disclosed sufficient evidence to clearly prove the allegations made in the complaint brought against you.

PROPOSED PENALTY

OPTION DECISION

Officer's Name _____ Date _____

I have been informed of the violation reported and have been given an opportunity to make my statement and to have representation prior to making any statement.

I have been informed of the findings of the investigation into the violation and the proposed Command Discipline in lieu of Disciplinary Charges.

I accept the findings and the proposed penalty in lieu of disciplinary charges. _____
(Officer's Signature)

I reserve my decision pending an appeal of the proposed penalty. _____
(Officer's Signature)

I do not accept the findings and decline the proposed command discipline. _____
(Officer's Signature)

Date: _____ Chief of Police Signature _____

Date: _____ T.P.O. Representative (s) Signature _____