



Fitchburg State University Police Department

**Subject: COMPLAINT
INVESTIGATIONS**

Reference: IACLEA: 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6,
4.2.7, 4.2.8, 4.2.9, 4.2.10, 4.2.11

MPAC: 52.1.1, 52.1.2, 52.1.3, 52.1.4, 52.2.1,
52.2.2, 52.2.3, 52.2.4, 52.2.5, 2.2.6,
52.2.7, 52.2.8

Effective Date:

May 11, 2020

Revised Date:

October 26, 2021

By Order of: Michael J. Cloutier, Chief of Police

General Order

4.2.1

PURPOSE:

The primary objectives in the administration of an effective personnel complaint investigation are to protect the integrity and reputation of the department, to protect the public interest, and to protect the accused employee from unjust accusations. This order establishes guidelines that will be followed while investigating an internal or external complaint involving any member of the Fitchburg State University Police Department. It will assist in the removal from duty of personnel that are found to be incapable of performing to the standards set for department personnel, and, also identify, eliminate, or modify any departmental practices that are contrary to the mission of the department and the University. It will also assist in finding the truth of allegations made against officers and thus protect them from malicious or inaccurate complaints.

POLICY:

It is the policy of the Fitchburg State University Police Department that all allegations of employee misconduct be appropriately investigated and promptly adjudicated. Additionally, all reports or accusations made against members of the department, or the department in general, from all sources shall be thoroughly investigated to ensure the integrity of the agency and its members.

IACLEA 4.2.1 / MPAC 52.1.1

All aspects regarding the monitoring of professional standards will be performed diligently with fairness and integrity. A proper administrative system will not only provide for necessary corrective action but will also protect employees from unwarranted and unjustified complaints.

PROCEDURE

I. Internal Affairs

- A. The internal affairs section of the Fitchburg State University Police Department will be made up of the following;
1. The Chief, Operations Lieutenant and Administrative Lieutenant.
 2. The Chief shall supervise and coordinate all internal investigations.
- B. The Chief will be notified of all formal complaints made against members of the department. Often, this notification will come from either the Lieutenant or the shift supervisor. The Chief will be notified immediately either at his/her listed home phone or on his/her cell phone upon receipt of a complaint of any of the following:
1. Excessive use of force;
 2. Violation of civil rights;
 3. Sexual harassment;
 4. A criminal act.
 5. In the case of all other complaints of a minor nature, the Chief will be notified no later than the end of the current shift.
- C. The Chief will determine if the complaint should be handled by his office, or if the complaint may be handled at the Lieutenant level.
- D. All complaints filed against the department will be reviewed by the Chief. All complaints filed with the department will be investigated.
- E. The internal affairs section of the Fitchburg State University Police Department is also responsible for recommending any changes in training methods used by the department as a result of any investigation.
- F. Procedures for making a complaint against the Fitchburg State University Police Department or any of its employees shall be posted on the department's web site, appropriate university publications, and the lobby of the police station. All employees will be made aware of these procedures through a review of this policy and will assist members of the public with inquiries relative to making complaints.

II. Levels of Complaints:

A. Level One Complaints:

1. Level one complaints will consist of those complaints which may lead to criminal charges being filed against the involved individual(s). In addition to any penalties imposed by the court, these charges could result in the suspension, removal or termination of the involved individual(s) from the Fitchburg State University Police Department. All level one complaints will be investigated by the Chief, or his/her designee. Examples may include but not be limited to the following;
 - a. Excessive use of force;

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- b. Death or serious injury
- c. Violation or breach of an individual's civil rights;
- d. Sexual harassment;
- e. Corruption,
- f. Criminal misconduct

B. Level Two Complaints:

1. Level two complaints are those complaints of a less serious nature, such as lesser violations of the rules and regulations of the department, poor police service, or minor breaches of conduct that would only lead to administrative charges being filed against the involved individual(s). These charges could lead to verbal reprimands, written reprimands or termination of the involved individual(s). Level two complaints may be investigated by the Lieutenants or Sergeants. Examples may include, but not be limited to the following:
 - a. Rudeness,
 - b. Improper use of the department's vehicles or other equipment,
 - c. Insubordination,
 - d. Chronic tardiness for the beginning of assigned shifts.
 - e. Other violations of the Department's Written Directive System.

IACLEA 4.2.6 / MPAC 52.2.1

III. Complaint Process:

- A. If a citizen makes a complaint, the shift supervisor or the officer in charge will request that the complainant provide a written statement detailing the incident and the nature of the complaint. This will be done by completing a statement form used by the department. Individuals making a statement should be advised to read over their statements and to make any corrections or additions to their statement before signing the statement. If a complainant refuses to sign their statement, a notation in the space where they would have signed will indicate their refusal.
- B. If the complaint is taken over the phone, the shift supervisor or officer in charge will request that the complainant come to the police station as soon as possible and put their complaint in writing.
- C. Refusal of the complainant to put their complaint into written form does not mean that an investigation is not required. The complaint may still be investigated if the Chief believes an investigation is required.
- D. If the complainant chooses, they may obtain a complaint form online on the department's website and either mail, hand-delivers, or email the form directly to the Chief. Each department member should be aware of the process and notify a supervisor of the pending complaint. The public should be made aware of this process, which is posted

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on the Fitchburg State University Police Department's website.

IACLEA 4.2.4 / MPAC 52.1.4

- E. All complaints against the agency and its employees will be as thoroughly investigated as much as possible. This will include anonymous complaints.
 - 1. At no time should an individual be denied an opportunity to register a complaint, nor should any such person be directed to return or call back later.
- F. After the complaint is taken, the shift supervisor or officer in charge, will as soon as practical forward the complaint to the Chief via email and notify him by phone of all Level 1 complaints.

IACLEA 4.2.7 / MPAC 52.2.2
- G. Every complaint that is taken should generate an incident number. However, given the sensitive nature of the complaints, the information listed in the log should be limited. (Call reason: Investigation, Action: Investigated). Narrative information may or may not be appropriate.
- H. The initial contact between a complainant and police authorities is a very important stage in the complaint process. The complainant is often tense, angry, emotionally upset, and the potential for hostility is great. Officers will show the utmost courtesy and cooperation to any individual registering a complaint or inquiring about the complaint process.
- I. The Chief of Police will acknowledge to the complainant in writing that their complaint has been received and that the complaint will be processed.

IV. Investigatory Process:

Internal affairs matters are among the most sensitive issues impacting the agency and, at times, the institution. Because of this, the Chief of Police should receive information about ongoing internal affairs matters directly. By identifying who is responsible for the internal affairs function and the various levels of complaints, members of the department recognize who will have the investigative responsibility for a given complaint and who is responsible for providing periodic updates to the Chief.

IACLEA 4.2.3 / MPAC 52.1.3

- A. All investigations of level one complaints will be directed by the Chief. He/she may ask another member of the command staff for assistance, however, he is responsible for the investigation.
- B. Complaints of a minor nature may be handled at the shift supervisor level. This will generally be complaints of the level two nature.
- C. The Chief will determine if the complaint might lead to criminal charges. A determination must be made, at an early stage, if the investigation will be pursuing criminal or administrative charges. The employee's rights under these two circumstances, especially as to compel responses to questions, are different and must be observed.
- D. The Chief of Police will notify, in writing, the individual(s) named in the complaint in a reasonable amount of time from when the complaint was made against them. The employee will also be made aware in writing of the nature of the complaint and they will also be made aware in writing of their rights and responsibilities relative to any investigation that may occur. Their rights under administrative or criminal investigations will be delineated. The only exception to this will be in the event of an on-going criminal

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investigation where notification would interfere with the investigation. *IACLEA 4.2.10 / MPAC 52.2.5*

1. Employees are expected to cooperate fully with all aspects of the investigation. Failure to cooperate in the investigation may result in disciplinary actions by the Chief of Police. This may include dismissal from their position.
 2. All internal affairs investigators will be trained before conducting such an investigation and will maintain their training level through ongoing training and education.
 - a. All civil rights of the employees of the Fitchburg State University Police Department will be observed during an internal investigation. However, if any employee has been granted transactional immunity from criminal prosecution of the alleged offenses and still refuses to cooperate with the investigation, they may be penalized for refusing to cooperate with the investigation. This may include the employee's termination from the University.
 3. At any point in the investigation, should it become necessary for the individual(s) being investigated to provide a statement, participate in a lineup or provide photographs or other physical evidence, they will have all of their civil rights observed.
 - a. While an individual's personal property, including his/her home, car and other property are protected from unreasonable searches and seizures under the Massachusetts Constitution, it must be understood by the employees that department property furnished to the employee, such as lockers, desks, computers or vehicles in which it is clearly understood in advance that an employee has "no expectation of privacy" may be searched without a warrant.
 4. Any medical, psychological, or laboratory examinations will be completed at the expense of the department. This examination must be specifically directed and narrowly related to the internal investigation being conducted by the department.
MPAC 52.2.6
- E. When conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods should be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused.
1. An internal investigation that is likely to only result in administrative action should still be conducted with the same degree of professionalism and competence as is devoted to an investigation where criminal charges are likely.
 2. Under Massachusetts General Law Chapter 149, Subsection 19B police officers may be required to submit to a polygraph or lie detector examination in connection with an internal investigation, if such a test is conducted by a law enforcement agency in the course of a departmental investigation of criminal activity and under such circumstances, officers may face disciplinary action for refusing to take part in the test.
 3. Employees may be compelled to submit a financial disclosure statement as part of an internal affairs investigation, provided that such a statement is material to the investigation being conducted.
- F. All internal investigations will be completed within thirty days of the start of the

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investigation. Exceptions to this may include the following reasons:

1. The need for additional investigation of the incident as determined by the Chief of Police;
2. Availability of witnesses.
3. Requests for investigatory extensions shall be requested by the investigating officer and made to the Chief of Police. The Chief will notify the investigating officer, the complainant and the employee should he/she allow and extension.

IACLEA 4.2.8/ MPAC 52.2.3

G. The individual conducting the investigation will report directly to the Chief of Police, and update the Chief on the status of the investigation.

H. The Chief of Police, or his/her designee, will keep the complainant informed concerning the status of a complaint to include, at minimum: verification that the complaint has been received for processing, periodic status reports (especially if investigations extends beyond thirty-days); and notification of the results of the investigation upon conclusion of the investigations.

IACLEA 4.2.9 / MPAC 52.2.4

I. The individual conducting the internal investigation will maintain a file which at a minimum will include the following:

1. The complaint;
2. Witness statements;
3. Physical evidence if any;
4. Copy of the employee notification and a copy of the notification to the complainant that their complaint was received;
5. Copy of the findings of the investigation and any recommendations that may result.

J. During the investigation, if it is necessary to interview or obtain a statement from the individual(s) named in the complaint, the investigator will take the proper steps to ensure that the individual's rights both as an employee and as an individual (civil) are not violated.

K. A record of all internal investigations, both ongoing and completed, and all the files related to internal investigations will be maintained by the Chief of Police in a secured area. Access to any internal investigation files will be limited to those members of the internal affairs section of the department. The files will only be released to outside parties by an order from the Chief of Police or by a court order. *IACLEA 4.2.2 / MPAC 52.1.2*

L. At no time will any member of the Fitchburg State University Police Department make or issue any statements to the media about an internal investigation. This is to protect the complainant, the involved employee, and the integrity of the investigation. Statements, if any are to be made, will be made after the investigation per the policies of Fitchburg State University.

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M. Upon completion of an internal investigation, the investigator(s) will turn over the entire report to the Chief of Police. Each allegation within the complaint will have a conclusion of fact. There are only four possible conclusions of fact which are:

1. **Unfounded:** The investigation has revealed that the alleged act did not occur, or did not involve personnel from the Fitchburg State University Police Department.
2. **Exonerated:** The act did occur, however, the members of the Fitchburg State University Police Department were justified in their actions and the actions were found to be proper and not in violation of any department regulations.
3. **Not sustained:** The investigation did not reveal any information or evidence that would prove or disprove the allegation(s).
4. **Sustained:** The investigation revealed that there are sufficient facts to support the allegations made in the complaint.

IACLEA 4.2.11/ MPAC 52.2.8

N. The Chief of Police of the Fitchburg State University Police Department will, in writing, notify both the complainant and the individual(s) named in the complaint of the outcome of the investigation within ten days of the completion of the investigation. If there is more than one allegation in the complaint, each allegation should be addressed in the letter of finding.

O. The Chief of Police will consult with the Director of Human Resources in determining the disciplinary outcome of all internal investigations if discipline is appropriate. All reasons for the disciplinary action will be recorded and included in the investigation file. The employee(s) involved will also be given a copy of a document stating what the disciplinary action is and why it is being taken. Possible disciplinary actions include the following, (and in accordance with the respective Collective Bargaining Agreement):

1. **Verbal Warning/Counseling:** The employee is verbally counseled by the Chief of Police. Documentation of this act may or may not be placed into the employee's personnel file. This will be at the discretion of the Chief of Police.
2. **Written Warning:** A written reprimand is placed into the employee's personnel file. The reprimand should outline the nature of the complaint, the results from the investigation and the justification of the reprimand.
3. **Suspension:** The employee is suspended from active duty for a period to be determined by the Director of Human Resources. The suspension may be with or without the loss of pay.
4. **Dismissal:** The employee's service with the Fitchburg State University Police Department is terminated.
 - a. If the employee is terminated as a result of misconduct, the Chief of Police in conjunction with the Office of Human Resources will provide the employee with the following:
 - i. A written statement citing the reason for termination;

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- ii. The effective date of the termination; and
 - iii. A statement of the status of fringe (sick, vacation) benefits and retirement benefits after termination.
5. **Retraining:** In some instances, remedial training may be recommended. This purpose is to ensure that the employee is aware of their duties and obligations in a related matter; and or is aware of how to properly apply or perform certain job related duties or functions.
- P. Disciplinary records shall be kept in accordance with the prevailing university policy.
1. All applicable state and federal laws will apply to the retention and purging of disciplinary records.
 2. The Chief of Police, or designee, shall publish, on an annual basis; a statistical summary based upon the records of internal affairs investigations for the previous year. The results of this analysis shall be posted on the department's web site/social media and in the lobby of the police station. Said summary will also be included in appropriate University publications. The summary shall include:
 - a. Internal Affair reference number
 - b. Allegation(s)
 - c. Conclusion of fact(s)

IACLEA 4.2.5

V. **Relief from duty:**

- A. Any supervisor may relieve from duty any employee, sworn and non-sworn, named in a complaint if he/she feels that the named individual(s) are unable to complete their duties at a satisfactory level. This includes the individual's mental and/or physical status. This must be done with the consultation and authorization from the Chief of Police, who will be notified immediately of the intended action and the circumstances surrounding the action.

MPAC 52.2.7

VI. **Liaison with the District Attorney's Office:**

- A. Any internal investigation which may, or does result in the bringing forward of criminal charges shall require the District Attorney's Office to be notified of the case to advise on legal issues and ultimately, prosecution if necessary. Contact shall be made by the Chief of Police or his/her designee.

VII. **Police Officer Standard and Training :**

- A. The Chief or designee shall transmit any complaint received by the department within two (2) business days to the Division of Police standards
1. The form shall include, but shall not be limited to:
 - a) The name and Commission certification identification number of the subject officer

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- b) The date and location of the incident;
 - c) A description of circumstances of the conduct that is the subject of the complaint;
 - d) Whether the complaint alleges that the officer's conduct:
 - 1) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level;
 - 2) was unprofessional;
 - 3) involved excessive, prohibited or deadly force; or
 - 4) resulted in serious bodily injury or death; and
 - e) A copy of the original complaint submitted directly to the agency; provided, however, that the Commission may establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior.
- B. Upon completion of the internal investigation of a complaint, the Chief or designee shall immediately transmit to the Division of Police Standards an investigation report in a form that shall include, but shall not be limited to:
- 1. A description of the investigation and disposition of the complaint;
 - 2. Any disciplinary action recommended by internal affairs or the supervising officer; and
 - 3. If the recommended disciplinary action included **retraining, suspension or termination**, a recommendation by the Chief for disciplinary action by the commission including, **retraining or suspension or revocation of the officer's certification**.
- C. Upon final disposition of the complaint, the Chief or Designee shall immediately transmit to the Division of Police standards a final report in a form that shall include, but shall not be limited to:
- 1. Any disciplinary action initially recommended by internal affairs or the supervising officer;
 - 2. The final discipline imposed and a description of the adjudicatory process; and
 - 3. If the disciplinary action recommended or imposed included retraining, suspension or termination, a recommendation by the Chief for disciplinary action by the commission including, retraining or suspension or revocation of the officer's certification.
- D. If an officer resigns during an agency investigation, prior to the conclusion of an agency investigation or prior to the imposition of agency discipline, up to and including

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termination, the Chief shall immediately transmit to the Division of Police standards a report in a form that shall include, but shall not be limited to:

1. The officer's full employment history;
2. A description of the events or complaints surrounding the resignation; and
3. A recommendation by the Chief for disciplinary action by the commission, including retraining or suspension or revocation of the officer's certification.

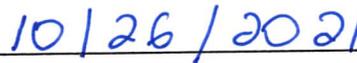
VIII Appendix:

- Citizen Complaint Form
- Notice of Investigation Template

Approval:



Chief of Police



Date

Notice of Investigation

Memo to: Officer [Name of the Involved Officer]
Memo from: [Investigator]
 Internal Affairs Division
Re: [Alleged Violation]
Date: [Date]

This document is designed to provide you with ample notice that you have become the subject of an official department internal investigation. The internal investigation is of the following nature:

- Administrative and Criminal
- Administrative

The nature of the complaint is as follows:

[Brief description of the allegations made against the officer]

You are hereby advised to carefully review your rights and responsibilities regarding an administrative and/or criminal investigation contained in the Fitchburg State University Police Department Internal Investigations Policy pursuant to General Order 4.2.1, Fitchburg State University Police Department Accountability and Discipline Policy pursuant to General Order 4.3 and your Collective Bargaining Agreement.

Pursuant to MGL Chapter 6E Section 8, a copy of the original civilian complaint (if applicable) and this notice was forwarded to the Division of Police Standards of the POST Commission.

You are also directed not to discuss this matter with any other individual other than your Union Representative (and/or Attorney if applicable).

You may also be contacted at a future date to answer written questions in regards to this incident. Pursuant to ***NLRB v. Weingarten, 420 U.S. 251 (1975)*** you will be allowed to have Union Representation, if you so desire, during any future meetings for the purpose of what is referred to as "*mutual aid or protection.*"

Please return this form to the Internal Affairs Investigator after carefully reviewing its contents and signing it. You are advised to retain a copy for your records.

I, the undersigned, hereby acknowledge receipt of this document and have read and understand its contents.

Signature _____ Date & Time: _____

Sincerely,

Lieutenant [Investigator's Name]