

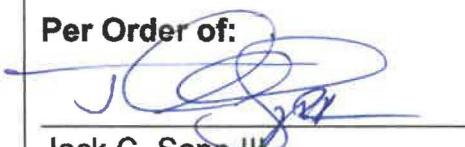


COLLEGEDALE POLICE DEPARTMENT

SECTION 4.02

DEPARTMENT ROLE AND AUTHORITY

SUBJECT: Investigating Misconduct and Citizen Complaints

Administration Review Date: 03/11/2021	City Attorney Review Date: 03/10/2021	Effective Date: 03/11/2021
Amends/Rescinds GO: N/A		Distribution: All Personnel
		TCA: 10-7-303
Per Order of:  _____ Jack C. Sapp III Chief of Police		

This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

I. PURPOSE

The purpose of this policy is to provide all Collegedale Police Department employees, and the public, the procedures for processing and investigating allegations of officer misconduct or citizen complaints.

II. POLICY

The Collegedale Police Department's public image is determined by a professional response to allegations of misconduct against its employees. Collegedale officers and employees are expected to maintain the highest standards of conduct. Officers shall conduct themselves properly and professionally, on or off duty. The establishment of procedures for the investigation of complaints is crucial to demonstrate and protect the Department's integrity, ensure transparency and promote constant improvement. This Department shall accept and fairly and impartially investigate all complaints or allegations of misconduct to determine their validity, and to timely implement any disciplinary or non-disciplinary corrective actions that may be warranted. It is the Department's policy to investigate every instance of alleged misconduct against a member of this Department, whether criminal or administrative in nature, in accordance with federal and/or local laws, and Department policies and procedures.

The Chief of Police shall be responsible for the investigation of all allegations of serious misconduct and serious use of force incidents pursuant to Department policies and procedures. The Chief may delegate investigative responsibilities or utilize resources outside the department to conduct investigations, including retaining outside investigators, as specified in this policy.

III. DEFINITIONS

- A. Complaint: An allegation by a member of the public regarding Collegedale Police Department services, policy or procedure, officer misconduct, claims for damages which allege officer misconduct, and any allegation of possible misconduct of a Collegedale Police Department officer.
- B. Complainant: Any person who files a Complaint.
- C. Class 1 Complaints: Serious allegations, including alleged criminal conduct that has the potential to damage the reputation of the Department or its personnel.
- D. Class 2 Complaints: Less serious allegations that warrant an investigation, but do not rise to the level of a more serious complaint.
- E. Class 3 Complaints: Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.
- F. Class 4 Complaints: Minor Service complaints by a citizen who contacts the Department questioning, or informally complaining, about a policy, procedure, or tactic used by the Department or an employee.
- G. Critical Firearm Discharge: A discharge of a firearm by a Collegedale Police Department officer to the extent such discharges are authorized under General Order 3.05, *Reporting and Investigating Force* and General Order, 3.07, *Firearms* policies. Range and training discharges, and discharges at animals are not included under this section.
- H. Counseling: Information relayed to an employee by a ranking officer or training officer, in which the information relayed points out strengths, weaknesses, or training needs, or offers the employee the opportunity to improve performance. Counseling is not disciplinary by itself, but may progressively lead to discipline.
- I. Discipline: An oral or written reprimand, loss of accrued leave time, suspension, demotion, or dismissal.
- J. Employee: Any person employed by the Collegedale, whether sworn or non-sworn, reserve, part-time, or full-time.
- K. External Complaint: A complaint that originates from outside the department.

- L. Internal Complaint: A complaint that originates from within the Collegedale Police Department. Such complaints may be initiated by other Collegedale Police Department employees or from supervisors who observed, or were informed by other employees, of possible policy violations.
- M. Internal Affairs Function/Division (IA): The designated Division/individual with primary responsibility for assigning and/or conducting investigations of Administrative or Citizen Complaints of Misconduct.
- N. Misconduct: Any conduct by a Collegedale Police Department employee that violates Collegedale Police Department policy and/or the law.
- O. Officers: Any law enforcement officer employed by, or assigned to, the Collegedale Police Department, whether on or off-duty, including supervisors and members authorized to carry department issued weapons.
- P. Preponderance of the Evidence Standard: The standard of proof in internal investigations is "preponderance of evidence," rather than the criminal standard of "beyond a reasonable doubt." The investigative findings are based on all available facts and evidence that is of greater weight or more persuasive than the evidence offered in opposition. Preponderance of the evidence has been described as a "slight tipping of the scales of justice," or "more than 50 percent," or "more likely than not."
- Q. Serious Misconduct: Suspected criminal misconduct and the specific forms of misconduct identified below in Section IV.D. Such conduct shall be investigated by the IA function or an outside law enforcement agency.
- R. Serious Use of Force: Any action by an officer that involves: 1) the use of deadly force, including all critical firearm discharges; 2) a use of force in which the person suffers serious bodily injury, or requires hospital admission; 3) a canine bite; and 4) the use of chemical spray or electronic control weapon against a restrained person.
- S. Summary Action: Disciplinary action in the form of an oral reprimand or written reprimand, taken by an officer's supervisor for minor violations of department rules, policies, or procedures as defined by the Department. Summary actions are the lowest level of disciplinary action.
- T. Supervisor: Includes those holding the rank of Sergeant or higher, any other sworn or non-sworn manager authorized by the Chief who has the authority to make decisions, evaluate, investigate and impose disciplinary measures over the personnel assigned to their Division or Unit.
- U. Use of Force Incidents Indicating Potential Criminal Liability: Includes, but is not limited to, all strikes, blow, kicks, or other similar uses of force against a handcuffed subject, and all accusations or complaints of excessive force.

IV. PROCEDURE

A. Investigations of Citizens Complaints

1. General

- a. All investigations shall, to the extent reasonably possible, determine whether the officer's conduct was justified. No investigation shall be closed simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury;
- b. All investigations shall be conducted by a supervisor who did not authorize, witness, or participate in the incident, and all investigations shall contain:
 - 1) Documentation of the name and badge number of all officers involved in, or on the scene during, the incident, and a canvass of the scene to identify civilian witnesses;
 - a. All witnesses, subject to the Garrity Protocol, attached herein as Garrity Protocol Appendix A
 - b. Thorough and complete interviews of witnesses, and an effort to resolve material inconsistencies between witness statements;
 - 2) Photographs of the subject(s) and officer(s) injuries or alleged injuries; and
 - 3) Documentation of any medical care provided.

B. Role of Internal Affairs Function

1. Upon receipt of the Complaint Form, the complaint will be reviewed and classified in its proper category for assignment by the Chief of Police or designee. Categories are identified in section C below.
2. The investigating supervisor shall evaluate complaints of criminal conduct made against Collegedale employees, and report findings to the Chief. The Chief may authorize transfer of the criminal allegation investigation to the District Attorney's Office or another outside law enforcement agency. A parallel Internal Affairs Investigation may be conducted to ensure no administrative or departmental violations have occurred, but may be delayed until the resolution of the criminal investigation.
3. Upon completion of the Internal Affairs Investigation Report, the report and all supporting documents shall be forwarded to the Chief of Police, or designee, for review. The Chief may accept the report as completed or return the report for further investigation.

4. IA investigating Supervisor shall have the following additional responsibilities:

- a. Maintain a central file for complaints in a secured area, and in conformity with records retention requirements of Tenn. Code Ann. § 10-7-303 and local ordinances;
- b. Conduct a regular review of complaints to ascertain the need for changes in training and/or policy;
- c. Maintain statistical and related information to identify trends involving all complaints of use of force, officer misconduct, and/or abuse of authority;
- d. Track complaints against individual employees to assist in identifying employee risks; and
- e. Provide the Police Chief, managers, and/or supervisors with annual summaries of complaints and final dispositions against officers.

C. Complaint Categories

The following chart depicts the types of complaints, which are defined by the seriousness of the allegation, along with whom the complaint is generally investigated and reviewed by:

TYPES	DESCRIPTION	EXAMPLES	GENERALLY HANDLED BY
CLASS 1	Allegations that have the potential to damage the reputation of the Department or its personnel, and generally include, but are not limited to, allegations of serious misconduct, serious violations of Standards of Conduct and other written directives, or criminal conduct.	<ul style="list-style-type: none"> • Excessive and/or improper use of force • Brutality • False arrest • Unlawful search and/or seizure • Corruption • Dishonesty and untruthfulness • Gross Insubordination • Violation of civil rights • Bias-based profiling • Sexual harassment • Workplace violence • Violation of criminal statutes 	THE CHIEF OF POLICE AND/OR INTERNAL AFFAIRS UNIT Formal and Documented with Written Statements and Recorded Interviews CRIMINAL INVESTIGATION DIVISION AND/OR OUTSIDE AGENCY OR INDIVIDUAL

CLASS 2	<p>Allegations that generally include, but are not limited to, allegations of a nonserious nature and violations of Standards of Conduct and other written directives of a non-serious nature.</p>	<ul style="list-style-type: none"> Violation of policies, procedures or rules, other than those which constitute a Class I Allegation Inappropriate conduct and/or behavior of a less serious nature, such as rudeness, courtesy, and offensive language Violation of personnel rules 	<p>OFFICE OF THE CHIEF AND/OR INTERNAL AFFAIRS UNIT Formal and Documented with Written Statements and Recorded Interviews</p>
CLASS 3	<p>Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.</p>	<p>When a citizen complains about the behavior of an employee, such as rudeness or demeanor, but does not wish to file an official formal complaint.</p>	<p>FIRST-LINE SUPERVISOR Informal and Documented as Informational Purposes Only</p>
CLASS 4	<p>Minor complaints by a citizen who contacts the Department questioning or informally complaining about a policy, procedure, or tactic used by the Department or an employee.</p>	<p>When a citizen questions or complaints about the <i>procedures or tactics</i> used by the Department or employee, such as on-scene command presence, or why handcuffs were used when detaining a subject, but does not wish to file an official formal complaint.</p>	<p>FIRST-LINE SUPERVISOR Informal and Documented as Informational Purposes Only</p>

D. Serious Misconduct

Serious Misconduct is understood by the Collegedale Police Department to mean suspected criminal misconduct and the following misconduct:

1. Civil suits alleging any misconduct by an officer while acting in an official capacity;
2. Civil suits against an officer for off-duty conduct (while not acting in an official capacity) alleging physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
3. Criminal arrests or filing of criminal charges against an officer;
4. Allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, creed, national origin, age, sexual orientation, gender identity, political

affiliation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;

5. Allegations of an unlawful search and seizure;
6. Allegations of false arrests or filing of false charges;
7. Acts of retaliation or retribution against an officer or person;
8. Acts of retaliation or retribution against a person for filing a complaint against a member;
9. Allegations of excessive use of force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose);
10. Failure to complete use of force reports required by Collegedale policies and procedures;
11. The providing of false or incomplete information during the course of a Collegedale investigation, or in any report, log, or similar document;
12. Incidents in which: (1) a person is charged by an Officer with assault on a police Officer or resisting arrest or disorderly conduct, and (2) the District Attorney's Office notifies Collegedale that it is dismissing the charge based upon Officer credibility, or a judge dismissed the charge based upon Officer credibility; or
13. Incidents in which the Collegedale Police Department has received written notification from the District Attorney General in a criminal case that there has been: (1) an order suppressing evidence because of any constitutional violation involving potential misconduct by a Collegedale Officer, or (2) any other judicial finding of Officer misconduct made in the course of a judicial proceeding, or any request by a federal judge, local judge, or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. The Chief of Police shall request that all such entities provide him/her with written notification whenever it has been determined that any of the above has occurred.

E. Investigation of Citizen Complaints: Supervisor's Role/Responsibility

1. The supervisor assigned to investigate a citizen complaint shall ensure the following protocols are applied in all investigations:
 - a. Every complaint must be investigated and evaluated based on the Preponderance of Evidence standard.
 - b. Any supervisor who is the subject of a complaint, or who authorized the conduct that led to the complaint, is explicitly prohibited from investigating said incident.

- c. Supervisors shall ensure that all officers who use force, or are involved in the use of force, shall submit a written statement regarding the incident, using the Use of Force Report form. The investigating supervisor will obtain statements from officers who witnessed a use of force.
 - d. During the investigation of a citizen complaint, all relevant evidence including circumstantial, direct, and physical will be considered, and credibility determinations made, if feasible. Officer's statements will not be given any automatic preference over a citizen's statement, nor will a witness' statement be disregarded on account that the witness is connected to the complainant. Every effort will be made to resolve material inconsistencies or discrepancies between witness statements and other collected evidence.
 - e. The Supervisor will not close an investigation because the complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional medical statements or written statements.
 - f. The Supervisor will consider whether any rule, policy, or procedure of the Collegedale Police Department was violated.
 - g. The Supervisor will conduct an investigation in accordance with the procedures outlined in this policy.
2. At the conclusion of the investigation the supervisor shall prepare an investigative report in accordance with the requirements outlined in this policy.

F. Employee Responsibilities to Report Misconduct

1. An employee must report any instances of employee misconduct as soon as practical following receipt of information regarding the misconduct.
2. In applicable circumstances, employees are to prevent the deterioration or destruction of any evidence that would support or refute the allegation of misconduct.

G. Confidentiality of Complaints

1. All employees who have knowledge that a complaint has been submitted, or will likely occur, are prohibited from discussing material issues related to the matter, except when being questioned or interviewed by the IA investigator.
2. Exemptions include: employees subject to the investigation when consulting with legal representation, in accordance with supervisory directives, testifying at an official hearing regarding the matter, or otherwise authorized by law, policy, or regulation.

H. Time Limits on Completing Internal Affairs Investigations

1. Generally, the Department should strive to complete Level 3 or 4 internal investigations as soon as practical. In cases of formal investigations, it may be possible to complete such an investigation within a few days or a calendar week. Once assigned, administrative investigations by a supervisor should be completed and forwarded to the Chief of Police for review within ten (10) days.
2. Administrative investigations for a Level 1 or 2 use of force shall be a priority for the Department, and should be expeditiously investigated and reviewed. These investigations should be completed and forwarded to the Chief of Police for review within thirty (30) days. The Chief of Police, or designee, may waive the 30-day requirement for complex investigations and investigations involving extenuating circumstances.
3. Time limits governing disciplinary action which may arise from internal investigations for police officers and civilian employees shall comply with any applicable State or Federal statutes, Collegedale City Ordinances, and provisions of the city personnel manual.
4. Supervisors shall be held accountable for the quality of their investigations. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough investigation, neglects to recommend appropriate corrective action, or neglects to implement appropriate corrective action.

I. Notifying Complainant Regarding Status of Complaint Investigation

1. Upon receipt of a complaint, the investigating supervisor shall make contact with the complainant, acknowledging its receipt. For formal investigations, the investigating officer will also send a letter to the complainant (if known) under the signature of the Chief of Police or designee, acknowledging its receipt. In some cases, this may be accomplished in person and/or via telephone. A written letter, however, should still be sent to the complainant for additional verification of receipt of the complaint.
2. Generally, internal investigators should maintain periodic contact with their complainants, as far as practical. Such contact can be accomplished by telephone or email, in lieu of a written letter.
3. For all internal investigations, the reporting party shall be notified as indicated below, by the Chief of Police or designee, informing him/her of the final disposition of the Department's investigation. Such notification should normally occur within ten (10) days after the conclusion of the investigation.

J. Investigative Interviews and Procedures of Officers

1. Prior to being interviewed, the officer against whom a complaint has been made shall be notified in writing of all allegations and the action that may be taken. The police officer shall be given an opportunity to respond orally and in writing to the charges and shall be advised of his/her rights and responsibilities relative to the investigation.
2. Every effort will be made not to conduct an interview of an officer under investigation while he/she is on duty; however, they shall be expected to cooperate with the investigation and be compensated during such at their current rate of pay. Interviews are preferred to be conducted at the Collegedale Police Department, unless the seriousness of the investigation or other justifiable reason is such that an immediate interview is required.
3. During interviews there will be one primary interviewer designated.
4. The complete interview shall be electronically recorded. The recording will note the time at which breaks are taken in the interview process, who requested the break, and the time at which the interview resumed.
5. The interviewer shall identify all persons present during the interview.
6. Subject to the approval of the Chief of Police, Officers will be administered the applicable Warnings prior to interview:
 - a. **Garrity Warnings:** For compelled statements if the inquiry is administrative (See Administrative Warning Form/Garrity Protocol attached as Appendix A).
 - b. **Miranda Warnings:** Where the inquiry is criminal and the officer is under arrest or in custody.
7. In criminal investigations or in instances where the employee is the subject of a pending or threatened civil suit or administrative proceeding, the employee has the right to talk to legal counsel or to have one present during questioning.
8. Examinations and Searches
 - a. The department may direct that the officer undergo an Intoxilyzer, blood, urine, psychological, polygraph, or medical examination, if it is believed that such an examination is pertinent to the investigation, so long as they do not violate any law.
 - b. An on-duty supervisor may direct an officer to submit to a breath, blood, or urine test when there is reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct, and is required to submit to such tests as the result of either being involved in a traffic

accident with a department vehicle or involved in a discharge of a firearm on or off-duty.

- c. An officer may be required to participate in a lineup if it is used solely for administrative purposes. This does not in any way affect the requirements of a legal order to participate. This includes photographic identifications if the investigator deems it necessary.
- d. Desks, lockers, storage space, rooms, offices, equipment, information systems, work areas, and vehicles are the property of the City of Collegedale and are subject to inspection. They may also be searched to retrieve city owned property, or to discover evidence of work related misconduct, if there is reason to suspect (*reasonable suspicion*) such evidence is contained therein.
- e. Private property can be stored in areas mentioned above; however, employees will not expect privacy in those areas. Only those employees who are acting in their official capacity may be authorized to search or inspect areas assigned to other employees.

K. Disposition and Adjudication of Complaints

- 1. All investigations into citizen complaint allegations of misconduct require review and disposition by the IA investigator's chain of command and the Chief of Police.
- 2. All citizen complaint allegations of officer misconduct will be fully investigated and documented.
- 3. The Chief of Police shall inform the City Manager of all internal investigations into officer misconduct that are classified as Class 1 and/or Class 2 investigations, as well as their respective dispositions. The Chief of Police may also inform the City Manager of any officer complaints that may not be classified as highly as Class 1 or Class 2, but may be deemed of some importance.
- 4. All summary actions shall be documented and investigation disposition(s) provided to the subject officer. Final reports, summaries, and dispositions shall be retained in the investigation case file. The allegations and investigation disposition shall be the only entries into the officer's agency record management system.
- 5. Once the investigation is deemed complete, the primary investigative authority for the investigation review the complaint report and investigative findings. This authority will compile a report of findings and provide a disposition for each allegation as follows:
 - a. *Sustained*: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Department rules, regulations or policies. All "Sustained" misconduct investigations require forwarding and action by the Chief of Police to ensure the consistency of discipline department wide.

- b. *Not sustained*: Where the investigation determines, by preponderance of the evidence, that there is insufficient fact(s) to decide whether the alleged misconduct occurred;
- c. *Exonerated*: Where the investigation determines, by preponderance of the evidence, that the alleged conduct did occur but did not violate agency policies, procedures, or training; or
- d. *Unfounded*: Where the investigation determines, by preponderance of the evidence, that there are no facts to support that the incident complained of actually occurred.

6. Investigative findings shall also include whether:
 - a. the police action complied with policy, training, and legal standards regardless of whether the complainant suffered harm;
 - b. the incident involved misconduct by any officer;
 - c. the use of different tactics that should or could have been employed;
 - d. the incident indicates a need for additional training, counsel, or other nondisciplinary corrective measures; and
 - e. the incident suggests that the agency should revise its policies, training, and tactics.
7. Disciplinary action shall be administered in accordance with Department policy and Tennessee law.
8. Following final disposition of the complaint, a letter shall be sent to the complainant, addressed from the Chief or his/her designee, explaining the final disposition.
9. A letter addressed from the Chief or his/her designee with the final disposition of the complaint shall be sent to the officer investigated.
10. Whenever reasonably possible, the investigation of complaints should be completed within ninety (90) days from the time the department knew, or should have known, about the alleged violation; unless a stay is granted by the Chief of Police, or another time frame is required by departmental policy, or Tennessee law.
11. Final Disciplinary Authority is vested in the Chief of Police and the City Manager in consultation.
12. **Notification of Prosecuting Attorneys of Disciplinary Action for Untruthfulness:** The Chief of Police will send to the Hamilton County District Attorney General a copy of any letter imposing disciplinary action on an officer for untruthfulness, and the office

of Internal Affairs will periodically provide the Hamilton County District Attorney General with a current list of officers who have been disciplined for untruthfulness.

13. In cases where there exists probable cause to believe that a fraudulent complaint was logged (*officially documented*) in violation of Tennessee law, the case may be referred to the District Attorney's Office for a prosecutorial determination.

L. IA Records and Confidentiality

1. IA case files and information shall be maintained separately from personnel records.
2. IA information is considered confidential and will be retained under secured conditions in the office of the Internal Affairs supervisor.
3. IA case files and personnel dispositions may not be released to any source without prior approval of the Chief, unless otherwise authorized by state open records statutes.
4. Internal Investigation Records, i.e. records of investigations resulting from a complaint against an employee of the police department, shall be retained for the term of employment of the officer or 10 years, whichever is longer. (MTAS-Tennessee, Police Records Retention Schedule)

M. Training

The Department will continue to provide training to all officers on the citizen complaint process and the appropriate responses in handling citizen complaints.

APPENDIX A

ADMINISTRATIVE WARNING FORM GARRITY PROTOCOL

Employee Name: _____

1. You are being questioned as part of an investigation by this agency into potential violations of department rules and regulations.
2. The matters under investigation are non-criminal in nature.
3. You are being ordered to answer questions specifically, directly and narrowly related to the performance of your official duties or fitness for duty.
4. If you refuse to answer questions or give false or intentionally incomplete information this can result in disciplinary action against you up to, and including termination.
5. Anything you say, pertaining to these matters only, cannot be used against you in a criminal court of law.
6. You have been granted use immunity. No answer given by you, nor evidence derived from the answer, may be used against you in any criminal proceeding, except for perjury or false swearing.
7. Anything you say may be used against you in any subsequent department charges.
8. You have the right to consult with a representative of your collective bargaining unit, or another representative of your choice, and have him or her present during the interview.

Do you understand what I have just explained to you? [] YES [] NO

Do you have any questions concerning what I have just explained to you? [] YES [] NO

SIGNATURE OF EMPLOYEE/MEMBER

DATE

SIGNATURE OF INTERVIEWER

DATE