

Best Practices Guide



International Association of Chiefs of Police

Smaller Police Departments
Technical Assistance Program

Internal Affairs: A Strategy for Smaller Departments

by Deputy Chief Beau Thurnauer

This project supported by a grant from:



BJA
Bureau of Justice Assistance
U.S. Department of Justice

Best Practices Guide for Internal Affairs A Strategy for Smaller Departments

*By Deputy Chief Beau Thurnauer, East Hartford, Connecticut, Police Department
Chief of Police, Coventry, Connecticut, Police Department [retired]*

Note: Local policies and procedures on internal affairs investigations require input and review from appropriate legal advisors (for example, city or county attorneys). Concepts presented in this article reflect best practices, but must be adjusted/refined by knowledgeable legal advisors in each community.

Introduction

Every police department large and small will sometime have to deal with a complaint concerning an officer's conduct or behavior. Although the process of handling these complaints varies between agencies of different sizes located in different parts of the country, there are some basic similarities that thread themselves through law enforcement in general.

Every Chief must have a good handle on the purpose of investigating internal inquiries and take them seriously if they are interested in earning the respect of their political body, the citizenry they serve, and the officers and civilians who work for them.

The Need

Sworn officers hold awesome power. We have the unique authority to remove a person's freedom and to use deadly force. And although the nation's majority believes we use these authorities appropriately, there are those who believe that the police take advantage of and abuse their power on a routine basis. An internal affairs investigative process is meant to ensure that department policy and procedures are followed and that all department employees follow agency standards of professionalism.

Since law enforcement is accountable to everyone regardless of their opinion of us, we are obliged to ensure that our officers operate within the confines of the law and according to procedure. The minute we detect any violation of not only statutory rulings, but of internal policies, we must investigate the incident and bring about swift and just correction, if required. Those town and city police departments that have not instilled confidence that every complaint will be examined, are inviting unnecessary complainants that are likely to reach town managers, mayors, and civilian review boards. Effective IA units will ensure that complaints are heard at police headquarters and that they are dealt with quickly and effectively.

Sworn officers are normally complained about more than other employees, however, we must never discount the importance of our civilian staff members who interface with the public and may also be the subject of complaints. In both smaller and larger departments civilians often work in dispatch centers, handle animal complaints, and may hold other positions that have a great deal of public contact. Complaints surrounding civilian staff conduct must also be investigated swiftly and fairly to ensure and maintain department credibility, confidence, and adherence to policy.

In today's police environment, Internal Affairs, also commonly called Offices of Professional Standards, are more important than they have ever been. Claims of misconduct and video recordings of police actions are now posted on to social media sites as they happen and given freely to television stations. Investigators should make sure they ask complainants if any video exists and strive to get copies when possible. If officers are wearing cameras, that footage may be the most important piece of evidence you collect.

Complaints

Who Receives Complaints?

Written IA policies are recommended and should always specify clearly who receives complaints. Most agencies allow complaints to be received at any level. In most agencies of 10 or fewer employees, the Chief will normally want to receive the complaint and investigate it. If there is a rank structure, it is most effective to assign the reception of the initial complaint to a supervisor. This practice allows the supervisor to assume some of the responsibility of his or her subordinate's actions. It is common for all complaints to be referred to a specific IA intake officer, usually a supervisor. However, the practice of assigning complaint investigations to an IA unit, away from the first line supervisor, may cause that supervisor to feel that he or she has lost the responsibility of corrective action with his or her officers when they make a mistake. This can sometimes be interpreted as undermining authority so investigative procedures must be developed with this in mind. You may want to include the first line supervisor in the decision-making process, or you may not, depending upon personnel and other relevant issues.

In either case, it is imperative that any investigation should be completed by someone of higher rank than the person who is the subject of the investigation. Avoid having a senior patrolman investigate a junior officer. Nothing causes hard feelings faster than officers of equal rank investigating each other.

Every officer should know exactly where to refer a complainant or be prepared to receive the information and pass it on to a supervisor. For example, if a patrolman is on the street and a citizen comes to him and complains that a cruiser was driving too fast the night before, the officer should be clear about exactly what to do with the information. It is never advisable to respond with anger or defensiveness.

Which Complaints to Accept

A simple declaration stating that ALL complaints against any member of the police department will be received and investigated leaves little room for dispute. CALEA Accreditation Standard # 52.1.1 states, "A written directive requires all complaints against the agency or its employees be investigated, to include anonymous complaints." It also prevents the age-old problem of certain complaints being discounted or rejected for purely subjective reasons. It is difficult to explain to a citizen why one complaint was accepted and one rejected for basically the same offense. This kind of inconsistency brings a supervisor's objectivity into question when his or her peer has accepted a complaint in the past for a similar offense.

It is important for each department to, 1) set the rationale for receiving complaints, 2) assign a person the task of receiving them, and, 3) specify in a formal policy format which complaints are accepted. A *bright line rule, stating clearly that all agency employees will accept any and all complaints* is the easiest to understand and teach other employees. It is not the easiest for most employees to accept.

Some departments feel that the credibility of the complainant should be assured by requiring a sworn statement from those who make the complaint. This can ensure sincerity, but it can also discourage honest people who may be skeptical or reticent. At no time should a department seek to discourage a person from making a complaint because the investigation process is embarrassing or difficult. A Community's trust in their local police department is solidified when our citizens know we want their input and will amend policies, procedures and behaviors if we find we have made mistakes.

Format of Acceptance

One common way to receive a complaint is through a formal written statement. However, a police department wanting to portray an image of true responsiveness will accept complaints in any form - by phone, mail, in person, e-mail, or web form. It is highly recommended that anonymous complaints not only be accepted, but that the department's policy clearly say so. Agencies run the risk of losing valuable community input if the complaint process is not clear and simple.

Notification of Officer

Credibility with the community is important, but credibility within the organization is vital. No employee likes to be complained about, but department staff will have a higher level of public support if every investigation is done fairly and uniformly. Unless a criminal investigation prohibits it, the officer who is being complained about should know the circumstances of the complaint immediately. This standard should be no different than in our court system in which the accused has a right to face his or her accuser. Anything less will create an environment of distrust and defensiveness within the department. The chief will always want to avoid hearing staff say, "...Even criminals are treated better than cops."

The Chief of Police determines when employee notification of a complaint is made. Normally, the employee is notified the day the complaint is received. This can be done in several different ways.

It is preferable to provide an employee with a copy of any written complaint. Administrators may also have guidelines in collective bargaining agreements that have to be met concerning complaint procedure. The term 'transparent' may be overused but in its true sense it means that everybody knows everything. Transparency is encouraged with IA issues. That does not mean that gossip is acceptable but does mean that there should be no secrets.

At this time, the officer who will be investigating the complaint should be notified. In smaller agencies, policy or tradition may stipulate that the Chief of Police will investigate all complaints. If this is not the case, the employee should know which supervisor will be conducting the complaint investigation. It is also advisable to send a letter to the complainant acknowledging the receipt of the complaint. This letter notifies the complainant that an investigation is commencing.

Since few members of the public truly understand the complaint process beyond what they have seen on TV, complainant notification often averts an irate phone call to Town Hall wondering why his or her complaint has not been attended to.

Administrative vs. Criminal Complaint Procedure

Few things cause more confusion within police agencies than the difference between administrative and criminal procedures involving a complaint. This discussion will not examine the many legal ramifications, but will include procedural basics to guide chiefs and command staff.

Immediately after the complaint is received, the person assigned to investigate will usually be able to determine whether or not there is a criminal element to the case. If there is no criminal element then the investigation is purely administrative, meaning that the result will be personnel action not criminal action. If there is even a hint that there is criminal behavior on the part of the employee, then one option is to separate the matter into both a criminal investigation and an administrative investigation.

The difference between a criminal or administrative investigation is distinct. Each requires careful procedures be taken at each step in order to comply with the law and agency policy and procedures, while taking care not to jeopardize prosecution, should that become necessary. Some departments run these investigations simultaneously while others prefer to complete the criminal investigation prior to beginning the administrative investigation. If a criminal investigation is needed, use Miranda rights where applicable and proceed no differently than you would in any other criminal investigation. However, chiefs must not fail to

take administrative action even if a criminal investigation is underway when public or other officer safety could be compromised. For example, the IACP Model Policy for Police Officer Domestic Violence recommends that if a DV incident is confirmed, the officer be placed immediately on administrative leave and surrender his or her weapon. Failure to take administrative action regarding serious complaints, can leave the chief, agency, and city vulnerable to legal liability and public criticism.

When the criminal investigation has been completed, begin the administrative part. Give Garrity warnings if you feel it is appropriate. Garrity warnings are similar to Miranda, but warn the employee that failure to fully disclose information that is related to the office held, may result in disciplinary action up to and including dismissal. [See *Edward J. GARRITY v. State of New Jersey (385 US 493)*] You will probably not use Garrity in every circumstance. If an employee gives you the full story with no evasiveness then your job is complete, but if they are uncooperative, then Garrity is in order.

Some departments do have policy that requires Garrity every time an inquiry is made. This procedure can be cumbersome when you have a rudeness complaint and you know you can resolve the issue by talking to the officer who may say, "Gee, I had a rotten day that day and I promise I will never let this happen again." A word of caution is in order, however, if during your routine administrative investigation, you suddenly uncover information that makes you think that criminal activity may be involved. In such a case, you should immediately cease your administrative inquiry and have someone else begin a criminal investigation.

If you have received information under Garrity rules, no information that you have obtained can be shared with the criminal investigator. A short example will make this clear. Let us say that a complainant comes to your office and states that an officer was rude during a motor vehicle stop - obscene and insulting. You then call the officer into your office and give him Garrity warnings.

The officer gives you a written statement saying that the violator had been stopped three times in the past and was a habitual offender who was just trying to get out of a ticket by making a complaint.

When you interview the passenger who was in the car with the complainant, you determine that the passenger gave the officer \$100 not to give the complainant a ticket. You decide that you want the officer arrested if the allegation turns out to be true. Since the statement that the officer provided was originally given in the Garrity environment, it is not admissible in criminal court. The criminal investigator assigned the case will not have the opportunity to see or review any of the administrative information gained up to this point. It must be a totally independent investigation. Miranda warnings will be given and the officer will be asked to give another statement under Miranda. Because of the complexity of these issues, entire courses are given to clarify Miranda and Garrity procedures. Consultation with a legal advisor can be helpful.

Although separation is preferred, there is another option. Some agencies feel that only one investigation is necessary as long as the suspect officer is the last person to be interviewed. If at the time of this last interview there is no suspicion of criminal conduct then Garrity would be acceptable. If probable cause of a crime has been established then the suspect could be given his or her Miranda rights without jeopardizing prosecution.

Investigation

Course of the Investigation

It is wise to have a formalized, written policy that describes each step of the internal investigation. It serves as a guide to your employees, and it lets the subject of the complaint know what to expect. This policy should outline what the investigation will include and what steps will be followed. For example, a letter will always be sent to the complainant to serve as confirmation of their complaint. It is best to keep consistency to the investigation by following all the steps all the time. It only complicates things when two citizens find they have been treated differently when they made complaints against the police. It distracts from the real purpose of the investigation and seriously erodes trust in the police department.

The complainant and witnesses should be interviewed by the investigator within 24 hours of filing the complaint, and preferably, within 24 hours of the incident. This allows the investigator to get information from the complainant and witnesses while it is still fresh in their minds and before they have an opportunity to taint their memory by second-guessing, talking with other witnesses, speaking with an attorney, or even being contacted by the subject of the complaint. A thorough and complete interview also locks the complainant and witnesses into their statements and helps identify any discrepancies or embellishments that may occur.

Interviews may be done at the police station or at the home or workplace of the complainant. If you want the complainant to really believe you are interested, I suggest you go to their home or workplace. Always check to see which is preferable. Audio or video recording is the best method to get accurate information, but some people are hesitant to have interviews recorded. Recording should not be a prerequisite to accepting the complaint. If you are interviewing an officer, record the conversation then have it typed to be sworn to later. Have statements notarized if possible. It may help avoid prosecution for false statements later.

It is often a complaint of command staff members or the chief that the initial receiving officer did not get enough information. One remedy that assists in meeting everyone's expectations is the use of a checklist. A sample checklist is included at the end of this article.

Representation

I have yet to see a situation where it would not be acceptable to allow a subject employee to be accompanied by a union officer or other representative during an interview. This is especially true in union states. Specify in the interview policy the precise amount of time the investigator will wait for this representative to appear at the interview. This will avoid unnecessary delays. The same time restraints should apply if the officer requests a lawyer.

There are limits to the representative's involvement. If a union representative or attorney becomes disruptive or interrupts to a point that an effective interview cannot be completed, the investigator is within his or her rights to request order or the representative can be dismissed.

Polygraphs and Psychological Exams

Most states allow a polygraph only if requested by the subject employee. The practice is not too common. Polygraphs have limited effectiveness in court and may muddy the waters if they are returned inconclusive. They may be more useful if used on a complainant you suspect is lying about officer misconduct.

It is possible that the polygraphist could elicit a confession from the complainant or a guilty officer if they are lying during the polygraph session. In a past case, a woman complained that an officer had been physically intrusive during a pat down. She gave a sworn statement that the officer had touched her inappropriately for over 30 seconds. The officer adamantly denied the allegation. During the polygraph, the examiner detected that the complainant was lying and gained a confession from her as she broke down emotionally during the polygraph exam.

Psychological exams can be a mixed blessing. They can be of critical value in protecting your town or city when an officer is just not capable of handling the job, but has not violated any specific rules. However, more than one officer has been returned from a psychological exam with a clean bill of health and a written statement attesting to their mental stability.

If you decide to use this tool make sure that the appointment is made when the employee is on duty. Officers have the right to refuse a psychological exam if it is required during off duty hours. Overtime or collective bargaining issues may be involved if off-duty time is required for a psychological exam. Never discount the less radical approach of offering a troubled employee an EAP [Employee Assistance Program] appointment. Officers who exhibit out of character or consistently poor behavior could be experiencing personal problems

and could benefit greatly from counseling through the confidential EAP program. This is a supervisory issue that, if noticed early on, could prevent complaints by addressing behavioral concerns of an employee when first noticed.

Thoroughness

Similar to criminal investigations, exculpatory information is also an issue in internal investigations. Make sure you conduct a thorough investigation that seeks information that may clear the officer. The investigation should examine both the pertinent facts that could possibly indict the subject employee and/or prove his/her innocence. Many states have officers Bill of Rights clauses either in union contracts or in statutes that stipulate guidelines for IA investigations that include: thoroughness, inclusion of information from all sources, and clear indication that no discipline is possible without just cause.

Participation by More than One Investigator–Identifying Additional Resources

If there are many people to interview, it may be necessary to include a second investigator. If the chief is conducting the investigation, he or she may assign a supervisor to take a statement or follow-up a lead. If the department consists of the chief and patrol officers only, it is best for the second investigator to come from an outside source, like the State Attorney's Office or State Police.

If you are confident that it can be handled objectively without outside help, then use an in-house investigator. Just be warned that in-house investigations can bring criticism of bias, but if you can prove the thoroughness of the investigation using your own staff, it will build tremendous credibility for your agency.

Notification Time Frames

Time frames for notification need to be specified in writing so that everyone understands the investigation process. It is normal for the entire investigation to be completed within 30 days of the original complaint. Officers should be notified within 24 hours of the original complaint. If the investigation is very complex there should be a provision that it can take longer than 30 days, but only with a written request from the investigator that is granted by the Chief of Police.

If correspondence to the complainant is necessary and/or included in a policy, the time frame should be clearly defined. Response within one week is reasonable. Complainants should be notified of a disposition within one week of the conclusion.

Storage and Retention of Files

All files should remain in a locked location within control of the Chief of Police, either in the Chief's office or in a records room nearby. Different states, towns, and police chiefs can have dissimilar ideas as to what is considered a *public record*. I recognize the divergent opinions on the subject of opening files to the public. Because public accountability is a major priority in my department, I prefer to make files (except medical information) available to the public. In five years of running an IA unit, I never had anyone but the press request reports, and I never suffered negative repercussions from permitting it. In the case of Freedom of Information Law or Sunshine Laws, public review of files can be permitted. As much as we may object to the request as intrusion, if the press really wants to get to IA files, they will probably be successful. We as Chiefs will always be under scrutiny when we refuse to allow IA file examination. Any interference by the department can be construed as hiding or covering up. If officers know that all IA files will be made public unless they contain medical information, they may think twice before committing any infraction.

It is preferable to keep IA files separate from all other case files with a separate numbering system. They need not appear on the police blotter unless the offense is a criminal offense. Unless disciplinary action is taken as a result of an investigation, the report need not be included in personnel files.

An early warning system for tracking personnel complaints is highly recommended as a way to track complaints filed and to recognize if any one officer or squad has received multiple complaints. The smaller the department, the easier it is to track founded complaints. This system may consist of a simple database, chart, or hand-written log. It should contain every complaint filed along with the name of the officer or employee being investigated, the date and the offense alleged, and, if possible the disposition of the case and/or corrective action taken.

Annually, or at a time to be defined by the chief of police, the log should be examined to detect patterns. If an officer has more than one complaint in a year, then you best meet with that employee and design a plan for corrective action. If no corrective action is necessary, the chief needs to document the investigation and describe any action taken to prevent future complaints. A great deal of litigation has been written lately regarding officers who have been the subject of multiple complaints, but have not received counseling or been identified in any way. There needs to be written documentation and a real plan for correction for every complaint.

Disposition

All cases need a disposition. What terms you use are up to you. Exonerated makes it clear that the officer did nothing wrong and that the case is cleared. Inconclusive is not always a preferred disposition, but may be an honest conclusion. If you have one person's word against another, with no proof for either side, *do not* exonerate an officer. This is an example of an inconclusive disposition. If there is proof that the officer was in the wrong, then he or she must be held accountable to the policy and corrective action must be taken. Failure to do so will jeopardize your job, your officer, and your city.

You must notify the officer and the complainant of the disposition. Even though we sometimes take these things for granted, officers will lose a lot of sleep until the case is closed. These are the hardest decisions we often have to make. Do so with objectivity. The letter to the complainant need not include details of the investigation or even the disposition, unless you feel this is important. It should include a statement thanking the complainant for their input and telling them that the case has come to a conclusion.

If the subject employee quits or retires during the course of an internal investigation, the investigation should be completed anyway. If there is an unanticipated civil action the completed case will be very helpful in responding to depositions or other inquiries.

For example, an officer is accused of racial profiling during motor vehicle stops. The officer then quits prior to disposition. In a subsequent civil suit the plaintiff claims that the agency has a history of profiling and that nothing is ever done about it. The plaintiff has a much stronger case if the investigation was never finished than if it was finished and the completion resulted in a policy change or a more in depth look at agency motor vehicle stop statistics.

Annual Reports

At the end of the year it is a good policy to make public all complaints received for the year. CALEA mandatory standard 52.1.5 states "The agency compiles annual statistical summaries, based upon records of internal affairs investigations, which are made available to the public and agency employees." It need not be complex or lengthy. A simple chart excluding names, but including the types of offenses, is appropriate. The public wants to know if there were 152 rudeness complaints or if there was only one. They also want to compare yearly stats. We include ours in the town's annual report. City administrators and citizens will tend to be more supportive of a department that follows such a process and publishes this information in an annual report. These recommendations are intended to provide a smaller police department with policy and procedure for Internal Affairs that enhances department credibility with citizens, reduces liability, and builds trust with employees.

Professional Standards Checklist

- Make contact with complainant [personal contact preferred]
- Obtain name, address, phone number and date of birth of complainant
- Determine where and when the incident took place
- Solicit, **in detail**, the specific circumstances of the incident, for example, if rudeness is the claim, get examples of the rude behavior
- Obtain, if possible, the name of the officer(s), OR, use department resources to determine the identity of any officers potentially involved.
- DO NOT** ask the complainant what they want the police to do about it, you will decide that after reviewing the circumstances
- Determine if there were witnesses and get names and contact information
- Contact the witnesses and include their observations in your report
- Collect case report information relative to the initial incident, if one has been filed, and include a copy with your report
- Determine if the alleged acts of the involved officer[s] violated any rules, regulations or policies of your agency and document the violation
- Contact the Officer for pertinent information
- If there is no violation - state that clearly
- If you believe a crime has been committed by an officer refer the case to the person designated within the agency
- Write a clear concise report. Document all information as if you were writing the narrative of any important case being investigated
- If you believe a minor complaint would be best handled by Supervisory Intervention, document the action you took to resolve (or attempt to resolve) the matter
- Sergeants must have a superior/supervisor review the report before submission to OPS by the end of shift
- If all this cannot be accomplished by the end of the shift, document what you have accomplished in your preliminary report before you finish your shift (CC the Deputy Chief of your bureau). Explain that a follow up is on the way and clearly state when you intend to finish the rest of this checklist.
- SUBMIT THIS CHECKLIST WITH THE ORIGINAL FORM #38 TO O.P.S.**

Bibliography

- ¹ Standards for Law Enforcement Agencies, The Standards Manual of the Law Enforcement Agency Accreditation Program, 4th Edition, January 1999
- ² FBI Law Enforcement Bulletin, March and April 1980, Interview of Public Employees Regarding Criminal Misconduct Allegations, Constitutional Considerations, Joseph R. Davis, Special Agent, Legal Counsel Division
- ³ Complaint Review Policy, Models for Management, National Law Enforcement Policy Center, Arlington, VA
- ⁴ Institute of Police Technology and Management, University of North Florida, Police Internal Affairs, presented at the Connecticut Police Academy, March 9-13, 1992
- ⁵ Institute of Police Technology and Management, University of North Florida, Advanced Police Internal Affairs Seminar, presented at the Connecticut Police Academy, March 1995
- ⁶ Report on Police, National Advisory Commission on Criminal Justice Standards and Goals, 1973

About the Author

Chief Beau Thurnauer, a twenty-two year veteran of the Manchester, Connecticut Police Department, retired at the rank of captain in 1998. From 1998 until 2006 he served as Chief of Police for the Coventry, Connecticut, Police Department. In 2007 Chief Thurnauer accepted a position as Deputy Chief of the East Hartford, Connecticut, Police Department. Chief Thurnauer is Chair of the IACP Crime Prevention Committee, He can be contacted at the East Hartford Police Department, 860-291-7642 or by email at bthurnauer@easthartfordct.gov.