

# BERLIN POLICE DEPARTMENT

## General Orders

GO 52.1.1

### GENERAL ORDER 52.1.1 INTERNAL AFFAIRS & Complaints That Allege Misconduct by law Enforcement Agency Personnel

#### **I. PURPOSE AND RESPONSIBILITY:**

- A. PURPOSE: To set the policy and establish procedures to accept, process, investigate, take appropriate action upon and resolve complaints from a member of the public relating to alleged misconduct or malfeasance committed by personnel of the Berlin Police Department. Complaints may allege abuse of authority, corruption, criminality, poor or slow service, or other misconduct or malfeasance on the part of agency personnel.
- B. RESPONSIBILITY:
  - 1. It is the responsibility of the Chief of Police to review all citizen complaints received against Department employees or allegations of violations of Department policies and procedures.
  - 2. It is the responsibility of the Chief of Police to assign an Officer to investigate citizen complaints or allegations of violations of Department policies or procedures, where deemed appropriate and in the best interest of this Department.
  - 3. It is the responsibility of the Officer assigned the internal investigation to provide written notice to employees advising them of the fact that they are the subject of an internal affairs investigation. The employee notice will contain specific information concerning the allegations against the employee, the employee's rights, and responsibilities.
  - 4. It is the responsibility of employees of this Department that are interviewed relative to a non-criminal internal affairs investigation to:
    - a. Cooperate as completely as possible with the investigating Officer.
    - b. Supply the investigating Officer with all requested reports which specifically relate to the investigation.
    - c. Assure that all questions relevant to the performance of duty are answered, failure to so answer may be cause for disciplinary action.

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References: 52.1.1; 52.1.2; 52.1.3; 52.1.4; 52.1.5; 52.1.6; 52.1.7; 52.1.8; 52.1.9; 52.1.10; 52.1.11; 52.1.12.

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- d. Be truthful in all responses relevant to the investigation.
- 4. It is the responsibility of the Chief of Police to make a final determination regarding all internal affairs investigations.

### II. **DISCUSSION:**

- A. This general order deals with the internal investigations that originate from complaints alleging employee misconduct or complaints relating to the operations of this department. The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of this department depends on the personal integrity and discipline of each employee. The goal of internal affairs investigations is to insure that the integrity of this department is maintained by an impartial investigation and review. Complaint investigations conducted in a fair and impartial manner provide a means to educate the citizen and help protect and maintain the integrity of both the department and employee. The intent of this directive is to establish procedures for the conducting of these internal investigations so that they may be known and understood by all employees.

- III. **POLICY:** This agency shall respond to allegations of misconduct or malfeasance against its employees consistent with this policy and fairly and impartially investigate all complaints or allegations of such conduct to determine their validity. The Department shall impose any disciplinary or non-disciplinary corrective actions that may be warranted in a timely manner. The Department shall accept and document all complaints against any employee regardless of whether the filed complaint is in writing, verbal, in person, by mail, by telephone (or TDD), by facsimile, electronic, or anonymous.

- A. It is the policy of the Berlin Police Department to record and investigate all complaints against this Department.
- B. It is the policy of the Berlin Police Department, that the Chief of Police will directly supervise the internal affairs function of this Department.
- C. It is the policy of the Berlin Police Department to provide written verification to persons lodging complaints against this Department or its employees advising that their complaint has been received.
- D. It is the policy of the Berlin Police Department to notify the complainant of the disposition of their respective complaints.

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- E. It is the policy of the Berlin Police Department to notify an employee when a complaint is lodged against them, advise the employee of their rights and responsibilities and notify them of the disposition of the complaint upon the completion of the investigation.
- F. In cases where criminal misconduct is alleged two separate investigations shall be conducted, one for the administrative internal investigation and one for to the related criminal investigation. Criminal complaints against Department employees will be brought to the attention of the Chief of Police immediately.
  - 1. Do not commingle cases to avoid any possible taint of the criminal investigation based on compelled evidence.
  - 2. Do not reveal or otherwise communicate the substance of any compelled statement taken during the course of an administrative internal investigation to investigators or others associated with the criminal investigation.
  - 3. In some cases it may be necessary to defer the entire administrative investigation until the criminal investigation is concluded. This should be coordinated with the prosecuting authority.
- G. There shall be no retaliation in any form by any member of this agency directed at an individual who makes a complaint.
- H. During the complaint intake process, no questions shall be asked of a complainant regarding their immigration status.
- I. Officers who withhold information, fail to cooperate with department investigations or who fail to report alleged misconduct or malfeasance of employees to a supervisor shall be subject to disciplinary action.

#### IV. **Definitions:**

- A. **Complaint:** An allegation of employee misconduct or malfeasance.
- B. **Complainant:** Any person who files a complaint regarding misconduct or malfeasance on the part of an agency employee.
- C. **Complaint Control Number:** A unique numerical or alphanumerical code used to identify and track citizen complaint investigations. A case number shall be pulled for the incident type of citizen complaint.

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- D. Discipline: Adverse action taken against any employee as the result of a sustained internal affairs investigation including, but not limited to, a written reprimand, suspension, demotion or dismissal.
- E. Employee: Any employee, whether sworn or non-sworn.
- F. Internal Affairs Division or Unit: The designated division, unit or person with primary responsibility to conduct investigations of administrative or citizen complaints of misconduct or malfeasance.
- G. Malfeasance: Illegal or dishonest activity especially by a public official.
- H. Misconduct: Any act or omission by an employee that is illegal or which violates established policy.
- I. Supervisor: Includes those holding the rank of Sergeant or higher.

### V. Procedures:

#### A. Internal Affairs Responsibility

The Office of the Chief of Police has primary oversight and authority over investigation of complaints made against employees. Upon receipt of a complaint, the Chief of Police will assure that the complaint is assigned to the appropriate division, unit, person or designated supervisor for investigation through the appropriate chain of command. Due to the sensitivity and impact of internal affairs matters on the direction and control of the agency, the internal affairs Officer shall report directly to the Chief of Police and when conducting an investigation on behalf of the Chief of Police, shall be considered as a Superior Officer and afforded the same respect given to the Chief of Police.

The designated division, unit, person or supervisor shall be responsible for:

1. Conducting a thorough, fair and impartial investigation of every complaint received regardless of the method of receipt.
2. Investigating and determining the nature, facts and circumstances of every complaint.

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3. Reporting to a supervisor up to and including the Chief of Police, if warranted, the results of the investigation, any recommendations and the resolution of that investigation.
4. Identifying and recommending for appropriate investigation and prosecution criminal misconduct discovered on the part of any individual during the course of an internal affairs investigation.
5. Preparing suggested revisions of Agency Policies and Procedures where existing deficiencies have been a contributing factor to misconduct.

### B. Acceptance, Filing and Intake of Complaints:

#### 1. General:

All persons are encouraged to bring forward legitimate complaints regarding possible misconduct or malfeasance of employees of this agency. All sworn and civilian employees shall be required to accept a complaint alleging misconduct or malfeasance by agency personnel. All employees must courteously inform an individual of his or her right to make a complaint if the individual objects to an employee's conduct. Employees have a duty to assist any person who wishes to file a citizen's complaint by documenting the information and allegations they provide, advising the individual how to proceed, and by promptly putting the complainant in contact with a supervisor who can assist them with filing their complaint. No employee shall refuse to assist any person who wishes to file a citizen complaint or discourage, interfere with, hinder, delay, or obstruct a person from making a citizen complaint.

#### 2. Acceptance of Complaint:

- a. The use of the standardized complaint form adopted by the Police Officer Standards and Training Council to record complaints. Each complaint shall be assigned a Complaint Control Number (CCN) to track complaints and a copy of this form shall be filed in a separate complaint file.
- b. Complaints may be accepted in writing, verbally, in person, by mail, telephone (TDD), facsimile, and electronically, or by any other means. Anonymous and third party complaints will be accepted.
- c. All employees will assist those who express a desire to lodge complaints against any member of the agency. This includes:

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- (1). Calling a supervisor to the scene to conduct a preliminary inquiry and document the complaint.
  - (2). Explaining the Department's complaint procedures.
  - (3). Providing complaint form(s) and/or complaint filing information and/or giving instructions as to where the complaint forms may be obtained.
  - (4). Ensuring that complainants, who are unable to read, write or understand the English language with sufficient proficiency to fill out the complaint form, or to be interviewed regarding their knowledge of the incident complained of, receive adequate language assistance to permit them to file their complaint and assist, as needed, in the investigation thereof. The name and identifying information of any person providing such language assistance to a complainant shall be recorded on the complaint form or in the body of the report.
- d. All personnel who are approached by a person seeking to make a complaint will, when possible, call a supervisor, obtain a brief description of the allegation, record contact information from the complainant if provided and obtain a Complaint Control Number (CCN) which should be provided to the complainant.
  - e. If a supervisor is not readily available, the officer will inform the complainant that they will be contacted by a supervisor or the person or unit assigned to conduct internal affairs investigations by the next business day.
  - f. Sworn and civilian employees who receive a complaint about their own conduct shall immediately refer the complaint to a supervisor.
  - g. All complaints shall be documented to include the date, time, location, and nature of the complaint, complainant's information (name, address, date of birth, telephone number, or other contact information, if provided, date and time the complaint was received, and the name, rank and/or title of the person receiving the complaint.

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- h. The withdrawal of a complaint does not prohibit the agency from completing an investigation.
- i. If complaints are received by mail, all correspondence received containing allegations shall be forwarded to the Chief of Police or the Chiefs designee where they will be officially received. These complaints shall be assigned a Complaint Control Number. A letter of acknowledgment must be prepared advising the complainant that the matter is being investigated and that they will be contacted by the investigator assigned.
- j. Walk-in complaints shall be referred to a Supervisor who shall then forward the complaint to the Internal Affairs designee. After the complaint is received and properly documented, the complainant may be placed under oath and requested to sign the complaint after reading or having it read to them the warning for perjury or false statement. If the complainant refuses to sign the complaint or acknowledge the oath, the complaint will still be accepted and investigated, however the refusal to sign or acknowledge shall be noted. In any event, the complaint will be assigned a Complaint Control Number and forwarded as above.
- k. Telephone complaints shall be referred to a Supervisor or the internal affairs designee. The party who receives the complaint shall obtain the details of the complaint as soon as practicable, dispatch a supervisor to the complainant's location, and proceed as described in the foregoing paragraph.
- I. Complaints from the field in which any member of the department is approached by a complainant expressing allegations of misconduct or malfeasance shall immediately be reported to a supervisor. The complainant shall be requested to await the arrival of the supervisor. If a supervisor is unavailable, or the complainant is unable to await the arrival of a supervisor, the complainant should be informed that he/she may respond to headquarters to make his/her complaint.

### 3. Validity and Timeliness of Complaints:

- a. Complaints by persons Under the Influence of Alcohol or Drugs:  
When a person who is noticeably intoxicated or impaired wishes to

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make a complaint, he or she shall be encouraged to wait until the earliest opportunity after he or she has regained sobriety to do so. When the Supervisor determines the circumstances require immediate action, preliminary details of a complaint should be taken by a Supervisor, when available, regardless of the person's sobriety. In that event, the internal affairs designee should re-interview the person after he or she has regained sobriety

- b. Delayed or Untimely Complaints: Complaints of misconduct or malfeasance shall be accepted regardless of when the alleged misconduct or malfeasance is alleged to have occurred. However, the timing of a complaint is one of the circumstances that the agency may consider in determining whether misconduct or malfeasance can be reliably substantiated and, if so, the nature and extent of discipline to be imposed. Where a delay in reporting alleged misconduct may call into question the veracity of the complainant, or has resulted in the loss or destruction of evidence or the inability to locate witnesses due to the passage of time, the facts and circumstances should be detailed in the report. Although allegations of criminal behavior may be made past the expiration of the applicable statute of limitations and criminal prosecution may no longer be possible, a criminal violator may still be held accountable administratively.

#### 4. Complainant Who Fears Retaliation Associated With Filing A Complaint:

If a complainant expresses fears of retaliation as a result of filing a complaint, they must be assured that those fears will be taken seriously. Complainants should be asked to provide the basis for their concerns, if possible, and the information provided should be noted in the complaint. This will allow the unit, supervisor or internal affairs designee to be aware of these fears and develop reasonable strategies to assist the complainant in dispelling those fears.

### **VI. Investigation of Complaints:**

- A. The Chief of Police or the Chiefs designee shall assure that all complaints received are processed and investigated appropriately as set forth in this policy. To achieve a timely resolution to internal affairs issues, an internal affairs investigation will generally be completed within thirty (30) days of the assignment. The Chief of Police shall be apprised of the status of these

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investigations on a weekly basis. In cases where extenuating circumstances exist, the time limit for the conclusion of the investigation may be extended by the Chief of Police.

- B. Complainants shall be notified in writing within five (5) business days of receipt that; (1) their complaint has been received by the agency and is currently pending; (2) that a complaint number has been assigned (including the assigned number); (3) that they will be informed in writing of the outcome of the complaint promptly following conclusion of the investigation, and (4) that they may contact the designated investigator (identify by name, telephone and/or email) at any time for further information while the investigation is pending.
- C. *Complaint Advisement:* Except under very special circumstances, or when an allegation has been made that an employee of this department has committed a crime or is engaged in continuing criminal conduct, employees of this department who are the subject of an internal affairs investigation shall be notified of that fact in writing. An employee who is the subject of a complaint shall be notified in writing within five (5) business days of the receipt of such complaint of; (1) the fact that a complaint has been made, (2) the identity of the complainant, if known, (3) the allegation and substance of the complaint, (4) the law or policy that is alleged to have been violated, and (5) the date upon which the investigation is expected to be completed, and (6) the employee's rights and responsibilities relative to the investigation.
  - 1. The Employee shall also be notified in writing of the disposition of the complaint upon the completion of the investigation.
  - 2. Where prior notification of the subject of a complaint is reasonably likely to impede the progress of an investigation, result in the loss or destruction of evidence, or jeopardize the safety of any individual, the Chief of Police may direct in writing that such notification be delayed, stating the reasons therefore and the anticipated extent of the delay.
- D. Nothing in this policy precludes the Chief of Police from referring an internal affairs investigation to an outside agency if such action would be in the best interest of the municipality and of justice.
- E. *Internal affairs mandatory disclosures:* There may be an instance, due to the nature of a particular complaint, which may require the collection of evidence in the course of the investigation. In these cases the following will apply:

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1. *Medical:* The Chief of Police may require an employee to submit to a physical examination by a doctor of the Department's choice. The cost of this examination shall be paid for by the department.
2. *Photographs:* The Chief of Police may require a department employee to submit to photographs in connection with an internal affairs investigation. The use of these photographs shall be in accordance with federal or state laws or court decisions governing their use.
3. *Line-up:* The Chief of Police may require an employee of this department to participate in a line-up when this action is specifically related to a particular internal affairs investigation. The line-up shall be conducted in a manner consistent with applicable State or Federal laws or court decisions.
4. *Financial Disclosures:* The Chief of Police may require a department employee to submit financial disclosure statements when this information is related to a particular internal affairs investigation. These requests for financial statements shall be limited in scope and shall apply only to information related to a particular investigation.
5. *Detection of Deception Devices:* The Chief of Police may request an employee to submit to a detection of deception device. The results of the examination could never be used in the prosecution of a criminal matter; the results, however, may be used administratively. The employment of any type of detection of deception device will be with the full knowledge and consent of the employee and shall be restricted to the direct internal affairs investigation only. Deception detection devices include, but are not limited to:
  - a. Polygraph.
  - b. Voice stress analysis.
- H. *Complaint Categorization:* All complaints or information alleging misconduct by employees of this department shall be investigated. As in all organizations, most complaints against employees can be resolved by the employee's Supervisor. This is considered an informal investigation. In an informal investigation, the employee's Supervisor meets with the complainant, meets with the employee, and then determines the

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appropriate action to take to resolve the complaint. Complaints handled in this manner may include:

1. Alleged rudeness on the part of the employee.
2. Tardiness.
3. With more serious complaints of misconduct, the Supervisor will take the initial statement from the complainant and refer the incident to his or her superior. This type of complaint will be brought to the attention of the Chief of Police and he may order a formal investigation by the Internal Affairs Officer. These types of complaints may include, but are not limited to:
  - (1). Corruption.
  - (2). Criminal misconduct.
  - (3). Unreasonable use of force.
  - (4). Violation of civil rights.
  - (5). Insubordination.

I. RELIEF FROM DUTY: The relief from duty may be a temporary administrative action pertaining to an employee's physical or psychological fitness for duty or an action pending disposition of an internal affairs investigation. The authority to relieve an Officer from duty should extend to supervisory levels. Employees may be relieved from duty with or without pay when:

1. Their physical or emotional condition precludes performance of all of the duties of their position.
2. An internal affairs investigation concerning criminal or administrative misconduct is pending.
3. An employee reports for duty and is deemed unable to adequately perform any of the assigned duties. The employee's supervisor shall prohibit the employee from beginning the tour of duty and immediately notify his/her superior

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### VII. Review of The Investigation:

- A. The designated internal affairs investigator's supervisor shall review the investigation to determine the thoroughness, completeness, accuracy and objectivity of the investigation.
- B. The completed report of investigation, disciplinary recommendation if any and the recommended disposition shall be reviewed by the Chief of Police or the designee of the Chief of Police.
- C. The complainant shall be promptly notified in writing of the status and/or disposition of his or her complaint at the conclusion of the investigation by the Chief of Police or his designee.
- D. Findings of completed investigations and disciplinary recommendations if any, shall be promptly conveyed, in writing, to the employee through his or her chain of command.

### VIII. Case Dispositions — Standards:

- A. For each charge or allegation of misconduct or malfeasance which forms the basis for an internal affairs investigation, such charge or allegation shall be classified upon closing of the investigation in one of the following manners:
  - 1. *Exonerated:* The investigation determined by a preponderance of the evidence that misconduct or malfeasance was committed, but not by the subject of the investigation.
  - 2. *Unfounded:* The investigation determined by a preponderance of the evidence that the misconduct or malfeasance complained of did not occur.
  - 3. *Not Sustained:* The investigation was unable to determine by a preponderance of the evidence whether or not the misconduct or malfeasance complained of occurred, or whether or not it was committed by the subject of the investigation.
  - 4.. *Sustained:* The investigation determined by a preponderance of the evidence that the misconduct or malfeasance complained of occurred and that it was committed by the subject of the investigation.

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In cases where the allegation has been sustained, the Chief of Police may, based on the circumstances at the time of the incident, further classify the matter as:

- a. *Sustained: No Discipline:* Where circumstances do not warrant discipline of the employee involved.
  - b. *Sustained: Discipline:* Where circumstances do warrant discipline of the employee involved
5. *Misconduct Not Based on Original Complaint:* The investigation determined by a preponderance of the evidence that other misconduct or malfeasance which was not the basis for the original investigation occurred, was discovered during the course of the original investigation, and was committed by the subject of the investigation.
  6. *Withdrawn:* At some point prior to the completion of the investigation, the complainant notified the agency that he/she wished the investigation to be discontinued and concurrence for this action was obtained from the Chief of Police.
  7. *Summary Action:* Disciplinary action in the form of an oral reprimand, or counseling documented in writing, was taken by an employee's supervisor or commander for minor violations of department rules, policies or procedures as defined by this agency. Summary actions are the lowest level of disciplinary action or remediation.
  8. *Reconciled:* At the discretion of the Chief of Police, the process of reconciliation may be encouraged in lieu of any of the above dispositions. When authorized by the Chief of Police, supervisors receiving complaints shall to the extent possible, bring together the complainant and the officer or employee involved in minor violations and attempt reconciliation. This may be used where the complaint is from a misunderstanding on the part of the affected officer, employee or the complainant. Reconciliation may be employed for complaints of a minor nature that do not reflect:
    - a. Discredit upon the agency.
    - b. Discredit upon the involved employee.
    - c.. Commission of a criminal offense; or

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- d. Allegations of racism, bigotry or prejudice against any race, religion, creed, national origin, sexual orientation, or circumstances beyond the individual's control.

Reconciliation must be documented through the chain of command to the Chief of Police or his or her designee. Reconciliation does not preclude further corrective action on the part of the agency.

- 9. *Policy Failure:* When adjudicating a complaint, it may be found that a complainant has a justifiable grievance, but that the employee involved acted properly within the prescribed policy or that the employee's training was less than desirable. In such cases, the investigator should recommend the appropriate complaint adjudication and prepare an additional section to their report entitled "Policy Failure".

- B. **INTERNAL AFFAIRS RECORDS:** Records pertaining to the internal affairs investigations shall be turned over by the Chief of Police to the Internal Affairs Officer. The Internal Affairs Officer shall secure these records in a locked Internal Affairs File which is separate from all other files. Access to these files is limited to the Chief of Police and the Internal Affairs Officer.
- C. **COMPLAINT INFORMATION:** An informational pamphlet will be made available to the public and disseminated to all department employees. The pamphlet describes the process and the responsibility of the complaining party in making complaints against personnel of this department or the operations of this department.
- D. **STATISTICAL SUMMARIES:** Annually the Administrative Assistant to the Chief will compile a statistical summary based upon the records of internal affairs investigations. These statistical summaries are available to the public and police department employees.

### **IX. Training:**

All supervisory personnel will be required to attend training on the department's Complaint Policy and the responsibilities of supervisors conducting internal investigations upon the implementation of this policy.

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References: 52.1.1; 52.1.2; 52.1.3; 52.1.4; 52.1.5; 52.1.6; 52.1.7; 52.1.8; 52.1.9; 52.1.10; 52.1.11; 52.1.12.

*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 law will form the basis for civil and criminal sanctions in a recognized judicial setting*

# BERLIN POLICE DEPARTMENT

## General Orders

GO 52.1.1

All supervisory personnel will be required to attend periodic refresher training, as determined by the department, regarding the policies and procedures contained herein and professionally accepted practices related to conducting internal investigation.

**X. Public Information and Access:**

The Chief of Police will:

- A. Ensure informational materials are made available to the public through police personnel, the police department facility, the police agency web site, the general government web site of the agency, the internet, libraries, community groups, community centers and at other designated public facilities.
- B. Ensure that copies of this policy and complaint forms are available at the town hall or another municipal building located within the municipality served by the law enforcement agency, other than a municipal building in which the law enforcement agency is located. This information should include relevant phone numbers and any addresses where complaints can be made. This information must explain the complaint process in English and Spanish.
- C. The complaint policy and forms should be made available online where the agency, or the municipality served by the law enforcement agency, has an Internet website.

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References: 52.1.1; 52.1.2; 52.1.3; 52.1.4; 52.1.5; 52.1.6; 52.1.7; 52.1.8; 52.1.9; 52.1.10; 52.1.11; 52.1.12.

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