

WINDERMERE POLICE DEPARTMENT GENERAL ORDER



Effective Date: April 16, 2018	<input type="checkbox"/> Rescinds <input checked="" type="checkbox"/> Amends 5.3 (October 1, 2013)	Number: 5.3
SUBJECT: Internal Investigations and Inquiries		Print Date: 04/16/18
Distribution: All Personnel	Accreditation Standards:	

This order consists of the following:

1. Purpose
2. Policy
3. Definitions
4. Procedures

1. Purpose

The purpose of this directive is to establish responsibility and authority over investigations into complaints made against department members. It is the intent of this policy to insure that management is kept informed of issues, incidents, and problems of any nature that effect the discipline and professionalism of the department.

2. Policy

It is the policy of the Windermere Police Department to have an internal investigation process to record, register, and control all complaints and investigations of alleged or suspected misconduct within the agency. The constitutional and statutory rights of all members shall be carefully guarded during all internal investigations. The Internal Investigation process will deal with those allegations made by members and/or citizens against members of the Windermere Police Department. Citizens must have the ready availability to access and lodge complaints against any member. Citizen requests for complaint forms must be honored without unnecessary delays or referrals.

3. Definitions

- A. Complaint - an allegation of misconduct, violation of law, or of an agency policy or procedure by any member of the agency, whether initiated by citizens or another agency member.
- B. Discipline Dispute Resolution Process (DDRP) - an elective process by which a member may acknowledge having violated agency policy and accept discipline, rather than proceeding with a formal investigation and disciplinary appeal. A DDRP affords the member and agency an opportunity to negotiate a mutually acceptable resolution to policy violations.
- C. Existing Evidence – reports, videos, and other items in the possession of the investigating authority which are obtained during the administrative investigation, and which are directly related to the allegations being investigated. This includes, but is not limited to, the complaint, all witness statements, all other existing subject officer statements, incident reports, GPS locator information, and audio or video recordings.
- D. Inquiry - the review and evaluation of information related to any suspected violation of agency policy or procedure by a member to determine whether a reasonable belief exists that the member was involved in the alleged violation and a formal investigation is necessary. An inquiry may be necessary before a formal investigation is undertaken.
- E. Investigation - an official review and evaluation of information relative to any suspected violation of agency policy or procedure where sufficient information exists to reasonably believe that the member may have committed the violation. The findings of an investigation could lead to disciplinary action.
- F. Member - for the purpose of this policy, an employee is defined as all full time and part time member to include Reserve Officers.
- G. Professional Services - the component of the agency which is responsible for coordinating and exercising supervision over all complaints and/or allegations of misconduct against the Windermere Police Department or its members.
- H. Reasonable Suspicion - facts that constitute less than probable cause but more than a mere guess.
- I. Recording - any type of electronic device that retains comments or statements to include, but not limited to, dictaphones, audio recorders, video cameras, mini-

camcorders, and the like. Recordings may also be any written statements by witnesses or written admissions by any alleged violator in an investigation.

- J. Representative - an individual who appears with the member during an interrogation/interview providing support and advice to the member. This individual may or may not be a member of the agency. This individual is prohibited from participating directly during the interrogation; he/she will be permitted to consult with the member or provide support and advice to the member.
- K. Working Days – Monday through Friday, excluding holidays.

4. Procedures

A. Purpose of Investigations

Internal investigations, coupled with the subsequent adjudication processes, are the elements required in maintaining the confidence of both the public and members, in the administration of internal discipline and ensuring compliance with procedures within the department. Investigations concerning complaints of misconduct are conducted to maintain department integrity, provide for the discipline of members and to protect innocent members. Investigations shall be conducted in accordance with all Florida Statutes and especially mindful of the rights and responsibilities of sworn members.

B. Availability of Supervisory Staff

By no means shall this written directive limit a member from talking directly with the Chief of Police, or any member of the chain of command.

C. Investigations

1. Internal Affairs Investigators

The Chief of Police shall appoint internal affairs investigators for the department. Internal Affairs Investigators shall report directly to the Chief of Police or designee. Third party investigations may be requested by the Chief of Police.

2. Authority for Investigations

- a. All internal investigations must be approved by the Chief of Police or designee.

- b. The Chief of Police is the final department authority in the adjudication of formal internal investigations and discipline.
- c. The Chief of Police has the final authority to determine the most appropriate means to investigate any complaint.
- d. The Chief of Police is a contractual employee. If the Chief of Police is the subject of an investigation, the Town Manager may request a third party investigator or terminate pursuant to the contract.

3. Basis for Investigations

Members who violate the oath of public trust through the commission of offenses punishable under laws, statutes, ordinances, or rules and regulations may warrant a formal internal investigation. Governing directives include, but are not limited to, the following:

- a. The Constitution and laws of the United States and the State of Florida
- b. Personnel Policies and Procedures for the Town of Windermere
- c. All general orders of the Windermere Police Department
- d. Any departmental order, or lawful command

4. Security of Investigative Files

a. Active Investigations

While under investigation, the case folder shall be maintained in a locked file.

b. Completed Investigations

The Records Custodian of the Windermere Police Department shall maintain all completed formal internal investigation files of all complaints against department personnel, in a locked secure area.

5. Investigation/Inquiry Assignments

Formal investigations/inquiries will be handled as follows:

- a. Supervisory Level—Supervisors may conduct inquiries on the categories listed below. Should the inquiry rise to the level of a formal investigation the Chief of Police or designee shall be notified.
 1. Rudeness
 2. Use of obscene or profane language
 3. Refusal to properly identify oneself
 4. Personal appearance
 5. Improper operation of a vehicle
 6. Failure to take reports when necessary
 7. Failure to take appropriate action when necessary
 8. Untruthfulness
 9. Improper investigative procedures
- b. Internal Affairs Investigator Level
 1. Violation of Town Ordinances
 2. Violation of Florida State Statute
 3. Violation of Federal Law
 4. Sexual harassment
 5. Corruption

6. Excessive use of force
7. Citizen complaints of discrimination
8. Issues of moral turpitude
9. Compromise of sensitive information to any administrative or criminal investigation
10. Any other complaint as delegated by the Chief of Police

D. Complaints

1. Citizen Complaints

Any citizen complaint coming to the attention of a supervisor shall be documented. Any complaint coming to the attention of a non-supervisory member shall be referred, as soon as practical, to the member's immediate supervisor.

2. Inquiries

The on-duty supervisor shall make contact with the citizen complainant and make every attempt to satisfy the complainant. Most complaints can be satisfied if addressed promptly and with sensitivity. Supervisors shall document all complaints against subordinates in his/her supervisory notes. Supervisors shall notify the Deputy Chief of any citizen complaints that are handled as inquiries.

Complaints may initially be worked as inquiries. If while conducting an inquiry, the investigating supervisor cannot establish a reasonable belief that a policy violation has occurred, the complaint may be concluded at the inquiry level. An inquiry will not be assigned a tracking number. Every effort should be made to complete an inquiry within forty-five (45) days.

If during the inquiry stage, the investigating supervisor establishes a reasonable belief that a policy violation may have occurred and the employee should be investigated for the purposes of discipline, such inquiry shall immediately cease and the employee shall be granted all rights consistent with the Law Enforcement Officers' Bill of Rights. The investigating supervisor may request or conduct a formal investigation.

Whenever possible, the investigating supervisor will initially question an employee verbally when conducting an inquiry. If the inquiry determines that there is no potential policy violation the investigating supervisor may ask for a written document confirming the information provided by the employee. The employee may have up to twenty-four (24) hours of the next business day to review the document with a representative before turning it in. If the inquiry leads to an investigation, or based on the initial facts presented there appears a reasonable belief of a policy violation, the employee who is being investigated shall not be required to provide a written report or response to questions posed during the investigation if it is the investigating authority's intent to interview the employee, under oath, consistent with the Law Enforcement Officers' Bill of Rights. This shall not prevent the employee from providing reports or other written findings required in the normal course of the performance of their duties.

3. Formal Complaints

Should the complainant wish to file a formal complaint, the supervisor shall make available to the complainant a Citizen Complaint Form and assist them in completing it. If the complainant is unwilling to sign a Citizen Complaint Form, the supervisor will complete the form and forward it to the Chief of Police via the chain of command.

4. Complaints involving significant issues or those with a potential for impacting the community at large should be brought to the attention of a member of command staff as soon as possible. The Chief shall also be notified.

E. Notifications

1. Member Notifications

When members are notified that they have become the subject of a formal internal investigation assigned by the Chief of Police, they shall be provided, in writing, a statement of the allegations (Notice of Investigation) and the member's rights and responsibilities relative to the investigation, F.S. 112.532, Law enforcement officers' and correctional officers' rights. Upon completion of a formal internal investigation against a member, the complainant and the member shall be notified in writing by the Chief of Police or Deputy Chief of the conclusion of fact and disposition concerning the allegation of misconduct.

In the event that a formal internal investigation ends in dismissal of a member, the member shall be provided the following information in writing.

- a. Reason for the dismissal
- b. The effective date of the dismissal
- c. The status of fringe and retirement benefits after dismissal
- d. The supporting documentation relating to the dismissal

2. Internal Affairs Investigator

- a. The assigned internal affairs investigator is responsible for keeping the complainant informed of the progress of the investigation. When an investigation is completed, the complainant shall be notified and provided a copy of the investigative report.
- b. The assigned investigator shall ensure that each investigative file contains, at a minimum, the following information:
 1. Assigned tracking number and date
 2. Member's name
 3. Complainant's name
 4. Complaint type
 5. Disposition

3. Reports to the Criminal Justice Standards and Training Commission (CJSTC)
Pursuant to CJSTC rules, all formal internal investigations (of members) will be documented on the appropriate CJSTC form. All sustained violations of non-compliance with FSS 943.13 (4) or (7) that do not result in the termination of the member will be reported directly to CJSTC. The Chief of Police or designee shall complete the form and forward to the CJSTC.

All cases in which the member resigns with a formal internal investigation or discipline pending will be reported to the CJSTC.

F. Investigative Guidelines

Agency members are hereby specifically informed that they have no expectation of privacy in regard to offices, desks, file cabinets, planners, computers, vehicles, pagers, cell phones and all other facilities and equipment issued or assigned by the agency. The collection of evidence in investigations involving members of the department shall follow the guidelines below.

1. All orders for collection of evidence in investigations shall be in writing.
2. No member shall be required to submit to a device measuring the truth responses during questioning. However, there shall be no restriction on the right of a member to submit to such device on a voluntary basis.
3. All testing methods for the detection of illegal drugs shall be conducted in conformance with FS 112.0455 and based upon criteria outlined in town policies.
4. A member may be required to be photographed or participate in a line-up, for the purposes of identification, if the member is reasonably believed to be the respondent and no other means of identification is available.
5. Members may be required to submit financial disclosure statements if the particular investigation involves questions of personal finances or financial misconduct.
6. The immediate family of members under investigation shall not be required to give statements in administrative investigations, but may volunteer such statements.
7. A member of the department shall not be required to subject their residence, place of private business, or private vehicle to search unless a valid search warrant has been obtained or the member voluntarily agrees.
8. Issued or assigned property shall be subject to search based on reasonable suspicion when related to a particular investigation.
9. When the circumstances of a particular investigation necessitate the collection of medical evidence; e.g. blood, hair, skin, etc., members may be required to submit to other types of medical or laboratory procedures.

10. Any investigator assigned by the Chief of Police or designee shall have command staff authority while performing investigative duties necessary to an Internal Investigation.

G. Confidentiality

1. Florida Statute

All formal internal investigations shall be considered confidential as described in F.S. 112.532.

2. Release of Records

Internal Investigation Reports shall not be released and/or made public prior to the time frame set forth by Florida Statute or when release of such information will, or is likely to, jeopardize the investigation and/or bring unjust, untruthful and/or unverified prejudice against the accused. The results of a formal internal investigation do not become public record until the investigation ceases to be active, or until the Chief of Police or designee provides written notice to the member who is the subject of the complaint, either personally, or by mail that the agency has concluded the investigation with a finding.

3. Public Records Requests

Formal internal investigations that are concluded (as stated above) are subject to a public records request. This request must be accepted with the following conditions:

- a. A member of the public may review a qualifying file at the police department. The person viewing the file must remain in the company of a member at all times. At no time shall the file leave the building in the possession of any individual not authorized by the Chief of Police or designee to possess the file. Labor fees for preparation of the file for review may be set forth by the Chief of Police.
- b. Citizens desiring copies of qualifying concluded Internal Investigation Reports may obtain the report from the Records Custodian. This must be in conjunction with a valid public records request. All personal, and/or medical, information about the

sworn member that is protected by statute will be redacted. Print fees per page may be set forth by the Chief of Police.

H. Disciplinary Actions

1. Levels of Discipline

Formal disciplinary charges may be brought against any member of the Windermere Police Department for any violation of general orders, criminal laws, or town ordinances. A member that is found to have violated a town ordinance or general order, or upon conviction in a court having criminal jurisdiction shall be subjected to disciplinary action. Any disciplinary action taken must be with the approval of the Chief of Police. Disciplinary action will be progressive, pursuant to General Order 5.2, *Discipline*. The Chief of Police will determine at what level the disciplinary action will begin depending of the severity and recurrence of the violation.

2. Responsibility for Actions

Members of the Windermere Police Department shall assume responsibility for their own actions. A member of the Windermere Police Department against who complaint or charge has been made shall refrain from any contact either directly or indirectly with the complainant or any witnesses in the investigation.


Chief David A. Ogden

ADDENDUMS

Citizen Complaint Form

Formal _____ Date: _____

Informal _____ Case #: _____ (If applicable)

Complainant: _____

Address: _____

Telephone (Home): _____ Work _____ Cell _____

Officer or employee Involved: _____

Details of Complaint: _____

COMPLAINANT AFFIDAVIT

STATEMENT: Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of their official duty, shall be guilty of a misdemeanor of the second degree as provided in Florida State Statutes 837.06, 775.082-083-084.

COMPLAINANT SIGNATURE: _____ DATE: _____

NOTARY SIGNATURE: _____

NOTARY NAME: _____ Sworn before

me:

This _____ day of _____, _____

Personally known: _____ Produced identification: _____

Identification/Number: _____ Revised on 9-

