Subject: Citizen Complaints  Number: 34

Effective Date: January 1, 1996  Rescinds: Former Arts. 5.0 and 5.1

Approved: Capt. B. S. Biscoe

This article contains the following sections:

34.1  Policy
34.2  General Considerations
34.3  Complaint Receipt Procedures
34.4  Investigating the Complaint
34.5  Expungement of Records

34.1  Policy

34.1.1 The BSUPD shall accept and investigate complaints of alleged misconduct against its members.

34.1.2 Based upon its findings, the BSUPD shall exonerate the innocent, establish the guilt of wrongdoers, and justly determine disciplinary action under the auspices of the Department of Human Resources.

34.1.3 The objectives of a well-disciplined police force is to protect the public and to maintain the integrity of the department and the individual police officer. The procedures in this order shall ensure that the rights of both the police officer and the citizen are not compromised.

34.2  General Considerations.

34.2.1 All members shall deal with citizens (members of the general public, employees, staff, and students of BSU) with courtesy and respect. Disagreements between members and citizens are to be handled politely and with professional dignity.

34.2.2 If a conflict/problem cannot be solved peacefully between a member and a citizen, the member shall request that a supervisor respond to the scene. This provision shall in no way interfere with the making of a lawful arrest, however.

34.2.3 All alleged or suspected actions of members involving the possible commission of a criminal offense, misconduct, neglect of duty, or other violation of the police manual, brought

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by a citizen, shall be reported through channels to the Assistant Director, in accordance with procedures contained in this article, and investigated.

a. It is the prerogative of the Assistant Director to immediately dismiss trivial or chronic complaints as unfounded which he/she deems unsubstantiated.

b. Nothing precludes the department from investigating allegations against members from whatever source received, consistent with the law, when the Assistant Director determines that such investigation is in the best interest of the department.

c. Anonymous complaints shall not be excluded from investigation.

34.2.4 BSUPD administrative charges may be placed against a member for any violation (either by omission or commission, on or off-duty) of the rules, regulations, policy, or procedures contained in the BSUPD Manual, or for any conduct detrimental to the good order, efficiency, or discipline of the force. Charges may also be placed against a member for violation of any federal, state, or local laws.

34.2.5 The term "complaint" shall mean any allegation that indicates a violation of BSUPD policy, procedures, rules and regulations.

34.2.6 Complaints by private citizens, faculty, students, staff, or even members of the department may be made at any time. Complaints may be received by mail in person or by telephone.

34.2.7 Complaints shall be received and treated as confidential information.

a. Members receiving complaints shall not discuss the nature of the complaint with the member against whom the complaint is made or anyone not authorized to have such information.

b. Accused members shall be notified in accordance with the provisions of this article.

c. All members of the force are authorized to receive complaints.

d. An officer receiving a complaint against another member shall immediately contact a supervisor and turn the complaint and the complainant over to him/her, or at least convey to the complainant, if he/she cannot remain available, that a supervisor will contact him/her.

34.2.8 Complaints relative to differences of opinion between police officers and citizens over the issuance of traffic citations do not come under the purview of this order. However, where a traffic case also involves an allegation that a police officer was in violation of law or a serious transgression of Police Manual, an investigation restricted to the allegation of misconduct shall be conducted.
34.2.9 For the purpose of this article, the term "brutality" is considered to include any situation wherein a member, while acting in his/her official capacity, resorts to the use of physical force which was unnecessary in its origin and application, or, when deemed necessary, was excessive in application.

34.2.10 Any member who subjects a complainant or witness to harassment shall be subject to appropriate disciplinary action. This in no way, however, prohibits the right of a member to bring suit arising out of his/her duties as a police officer.

34.3 Complaint Receipt Procedures.

34.3.1 When verbal complaints are received, the receiving supervisor shall request that the complainant document the allegation(s), preferably at that time.

   a. If the complainant refuses to document the complaint, the receiving supervisor shall do so on the complainant's behalf, and ask the complainant to attest to the documented version of his/her complaint.

   b. If necessary and practical at the time, the supervisor shall also take a statement from the complainant.

34.3.2 A report shall be made by the supervisor who first receives information about the alleged violation, even when it is initially believed to be unfounded.

   a. This information shall be orally reported to the Shift Commander within a reasonable length of time following receipt.

   b. A reasonable length of time shall be construed to mean the time necessary to determine the specific nature of the complaint, but should not exceed four hours.

   c. The Shift Commander shall furnish a written report, including a copy of all related reports and paperwork, to the Assistant Director as soon as is practical.

   d. Anonymous complaints shall be processed in the same manner as those in which the complainant is identified, and shall be further handled as follows:

       (1) Efforts shall be made to gain the cooperation of the complainant, wherein he/she may choose to identify him/herself.
(2) Although anonymous complaints, by their very nature, are difficult to substantiate, this shall not preclude a preliminary inquiry into the matter by the supervisor.

(3) The investigation shall be terminated when no additional evidence can be obtained.

(4) The case shall be documented and the member informed of the nature of the complaint and the result of the investigation.

34.3.3 Complaints against a supervisor shall be investigated by a BSU official of higher rank.

34.3.4 Complaints against the Assistant Director shall be investigated by the Director of Campus Safety.

a. All procedures requiring the Assistant Director to act or be involved in the complaint process shall resort to the Director of Campus Safety.

b. In such cases, the Director of Campus Safety shall comply with all procedures required of the Assistant director in this article.

34.3.5 In those cases concerning allegations of brutality:

a. The investigating supervisor shall comply with the Annotated Code of Maryland, Article 27, Section 728B(4), which states:

A complaint against a police officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint be duly sworn to by the aggrieved person, a member of the aggrieved person's immediate family or by any person with first-hand knowledge obtained as a result of the presence at and observation of the alleged incident or by the parent or guardian in the case of a minor child, before an official authorized to administer oaths. An investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken unless the complaint is filed within ninety (90) days of the alleged brutality;

b. If the complainant refuses to swear to a complaint alleging excessive force, no investigative action shall be taken. The supervisor receiving the complaint under these circumstances shall submit a report through channels to the Assistant Director setting forth the known facts and circumstances concerning the complainant's refusal to swear to a complaint;

c. The protection of the police officer from false accusation of brutality does not
prohibit the Assistant Director from directing an investigation without a sworn complaint. Circumstances of the incident may dictate that an investigation is necessary and that a brutality charge could result; and

d. The reports shall be placed in a confidential case folder file in the case folder until such time as the complaint has been signed and duly sworn by the complainant, in accordance with Article 27, Section 728B of the Annotated Code of Maryland, and Public Local Laws, Section 16-42(b).

34.3.6 Upon determining the nature and gravity of the case, the Assistant Director shall:

   a. Provide an internal investigation control number; and

   b. Specifically authorize the supervisor assigned to investigate the complaint, or reassign the investigation to another supervisor.

34.3.7 For complaints received through the mail, the supervisor assigned to investigate the case shall contact the complainant upon his/her receipt of the complaint. At this time the supervisor shall:

   a. Inform the complainant that the department has received his/her complaint and that he/she has been assigned to investigate it;

   b. Obtain additional information about the allegation(s) and possible witnesses;

   c. Schedule an appointment with the complainant, if an interview is necessary; and

   d. Inform the complainant that he/she will provide the complainant with updates during the course of the investigation and will notify him/her of the results of the investigation when it is completed.

34.4 Investigating the Complaint.

34.4.1 The supervisor conducting the investigation shall be responsible for insuring a complete and expeditious investigation and may request the detail of other members to assist in the investigation.

34.4.2 In all complaints alleging brutality against members acting in their official capacity, the Shift Commander initially receiving the complaint shall, in addition to the reporting requirements:

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a. Notify the complainant that the complaint must be sworn to as required by law and determine if medical treatment is desired; and

b. Cause photographs to be taken, if possible, of the alleged injuries.

34.4.3 All named complainants shall be personally interviewed and identifying information recorded, i.e.:

a. Name,

b. Address,

c. Home and work phone numbers,

d. Race, sex, and date of birth, and

e. Employee name and address.

53.4.4 The primary goal of any interview is to arrive at the truth. Every relevant fact known to the complainant should be determined.

a. The investigative questions--who, what, when, where, why and how-- should be precisely addressed.

b. Formal tape recorded statements of the complainant's interview should be taken whenever possible.

c. A determination should be made during the initial stage of the investigation whether the complainant can be satisfied.

(1) Frequently, the complainant does not wish an investigation, but merely an explanation.

(2) When an explanation is sufficient, the Assistant Director may decide whether to continue processing the complaint

(3) Otherwise, the complainant should be left with the knowledge that a full and fair investigation will be conducted, and that he/she will be notified of the results.

34.4.5 Whenever possible, all witnesses involved in the matter under investigation shall be personally interviewed, and, depending on the type or severity of the complaint, tape recorded statements should be obtained.
a. Specific and detailed questions should be asked.

b. The motivation of the witness should be sought, such as his/her relationship with the complainant.

c. Personal identifiers should be obtained.

**34.4.6** The investigating supervisor shall contact the complainant at least twice during the investigation to provide status reports.

a. The status reports shall convey to the complainant:

   (1) How the investigation is proceeding;

   (2) Any problems that he/she can appropriately and legally reveal that has tended to impede the investigation, e.g., explaining in a general way, without providing names or other identifying information, that he/she has had difficulty contacting several witnesses or scheduling appointments; and

   (3) When he/she projects that the investigation will be completed.

b. If the time to complete the investigation is extended, the supervisor shall contact the complainant once during each period of extension to apprise the complainant of this fact. Specific reasons for the extension should only be provided if it is appropriate to do so, such as the necessity to interview an important witness who will be unavailable until a certain date.

**34.4.7** Should it be determined at any time during the investigation that the complaint is clearly unfounded, the investigation shall be terminated, and reports and statements justifying that finding, along with a cover memorandum, shall be forwarded to the Assistant Director.

**34.4.8** An internal investigation is considered to be completed when:

a. The complainant and witnesses have been thoroughly interviewed;

b. Department members have been questioned;

c. All the physical evidence has been competently examined;
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d. All logical leads have been fully explored; and

e. A report, with recommendations and supporting evidence, has been prepared, submitted to the Assistant director, and acted on by him/her.

34.4.9 When the investigation is completed, the investigator shall classify the complaint as follows:

a. Sustained: The allegation is supported by sufficient evidence.

b. Not Sustained: Insufficient evidence either to prove or disprove the allegation.

c. Exonerated: Incident complained about occurred but was lawful and proper.

d. Unfounded: Allegation is false or not factual.

34.4.10 Investigations shall be completed and submitted to the Assistant Director within 30 calendar days of receipt.

a. If the investigator has been unable to complete the investigation due to matters not within his/her control, he/she may orally request a 15-day extension, through channels, from the Assistant Director.

b. If the investigator requires more than the extended time to complete the investigation, he/she shall submit a written request, through channels, to the Assistant Director, for an additional extension, explaining why he/she has been unable to complete the investigation and asking for a specific deadline.

c. The Assistant Director may grant the additional time requested to complete an investigation, or may direct that the investigation be completed within a specific time frame.

34.4.11 Upon completion of the administrative handling of sustained cases:

a. A notation of the administrative action assessed shall be made;

b. The file shall be forwarded to the Administrative Section and placed in the member's personnel jacket.
c. All other cases shall be regarded as confidential, and the records of such cases shall be retained only in the case folder file and are not a matter of public information.

34.4.12 Once the complaint has been finally acted upon by the Assistant Director, the investigating supervisor shall contact the complainant to notify him/her of the results of the investigation. The extent of the notification shall be to inform the complainant of following information:

a. That the investigation has been completed;

b. How the investigation was classified;

c. A general and brief explanation as to why it was so classified;

d. If applicable, that the member was disciplined, although not providing the complainant with the specific disciplinary action that was taken against the member;

e. Determining whether or not the complainant is satisfied with the manner in which the investigation was conducted and with the results; and

f. Expressing appreciation to the complainant for coming forward.

34.5 Expungement of Files

34.5.1 The record of a formal complaint shall be expunged if:

a. The member has been exonerated of all charges in the complaint or the charges are determined to be unsustained or unfounded; and

b. Three years have passed since the findings were rendered by the department.

34.5.2 To comply with the expungement requirements of State law, the following procedure shall govern expungements from internal affairs files:

a. The Administrative Section shall expunge records of formal complaints which are classified as non-sustained as soon as practical after the termination of the three-year time limit.

b. Members who does not want their non-sustained records of formal complaints expunged shall notify the Administrative Section no later than thirty (30) days after the end of the three-year time limit.

c. One complete copy of each file shall be retained by the Assistant Director in a
separate secure file for one year from the date the determination was made to expunge the file, and disposed in accordance with State law.

34.5.3 Expunged files sent to the Hall of Records may be retrieved for review or release only by the Assistant Director or the Attorney General's Office.