



**Village of Fishkill Police Department  
4 Wood Place  
Fishkill, New York 12524**

**GLENN R. SCOFIELD JR.  
POLICE COMMISSIONER**

**FBINA – 214<sup>TH</sup> SESSION  
MEMBER – IACP  
MEMBER - NYSACOP**

## HOW IT WORKS: COMPLAINTS ABOUT POLICE

The Village of Fishkill Police Department can receive personnel complaints through a number of sources. Formal complaints can be filed using the **Department's Civilian Complaint Form** which can be returned directly to the Department or turned in to the Village Hall. Additionally, complaints may be made directly in person, or by telephone to police Headquarters. Sometimes they are forwarded through third parties such as the Village Administration (ie: Mayor, Trustee or Village Clerk).

Anytime the Department's command staff is made aware of anything that may be construed as a personnel complaint (from any source) it is treated as a personnel complaint.

Often times people come to police headquarters or call the Department after an interaction with an Officer to seek an explanation of the interaction or of the Officer's actions. These types of matters are usually resolved with such an explanation but if the person is still unsatisfied or does not accept the explanation, they would also be handled as personnel complaints.

Once a personnel complaint is received it will be investigated by a member of the command staff in the same manner that any other police investigation would be conducted and a case report will be completed. All available means of collecting evidence such as interviews with the complainant, witness and officer involved, station and other surveillance cameras, etc. will be utilized when possible.

If the investigation indicates that the Officer did nothing wrong, the Officer will be exonerated. If there is insufficient evidence to substantiate the complaint, it will be considered unsubstantiated. If there is evidence substantiating the complaint and the Officer is determined to have violated policy or procedure, the case will be turned over to the Police Commissioner to make a determination as

to what, if any, discipline is appropriate. This can range from verbal counseling to dismissal. In any case, the complainant will be contacted and advised of the results of the investigation.

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Complainant information (may be filed anonymously)

Name: \_\_\_\_\_  
Last First MI

Address: \_\_\_\_\_  
Street (actual address, no PO box)  
\_\_\_\_\_  
City State Zip

Witnesses: \_\_\_\_\_  
Name Address Phone Number  
\_\_\_\_\_  
Name Address Phone Number

Date of Incident: \_\_\_\_\_ Time of Incident: \_\_\_\_\_ AM/PM

Incident Location: \_\_\_\_\_

Number of Officers Involved: \_\_\_\_\_ Badge Number(s), if known: \_\_\_\_\_

Name(s) of Officer(s) if Known: \_\_\_\_\_

Supervisors Name, if Contacted: \_\_\_\_\_

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Description of Incident: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Were You Arrested: \_\_\_\_\_ Were You Injured: \_\_\_\_\_ Was Anyone Notified of Injury: \_\_\_\_\_

If So, Who Was notified: \_\_\_\_\_ Did You seek Medical Treatment: \_\_\_\_\_

Name of Hospital, Doctor (if known): \_\_\_\_\_

Complete if Applicable:

Describe Injury / Type of Force Used: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe Discourtesy: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Complainants Signature (optional) \_\_\_\_\_ Date \_\_\_\_\_

Supervisors Signature \_\_\_\_\_ Rank/Shield \_\_\_\_\_ Date \_\_\_\_\_

----- Official Use Only -----

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Blotter/Case Number: \_\_\_\_\_

How Received: Referral \_\_\_\_\_ In Person \_\_\_\_\_ Us Mail \_\_\_\_\_ Telephone \_\_\_\_\_ Email \_\_\_\_\_

Forwarded To: \_\_\_\_\_  
Name \_\_\_\_\_ Rank \_\_\_\_\_ Date \_\_\_\_\_

## Personnel Complaints

### 1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Village of Fishkill Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

### 1010.2 POLICY

The Village of Fishkill Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law and municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

### 1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

#### 1010.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

**Informal** - A matter in which the Shift Supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

**Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Professional Standards Unit, depending on the seriousness and complexity of the investigation.

**Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Professional Standards Unit, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

# Village of Fishkill Police Department

## Policy Manual

### *Personnel Complaints*

---

#### 1010.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

#### **1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

##### 1010.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other Village facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

##### 1010.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

#### **1010.5 DOCUMENTATION**

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Police Commissioner or the authorized designee.

# Village of Fishkill Police Department

## Policy Manual

### *Personnel Complaints*

---

#### **1010.6 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

##### 1010.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Police Commissioner or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  - 1. The original complaint form will be directed to the Shift Supervisor of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Lieutenant or the Police Commissioner, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
  - 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
  - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Shift Supervisor.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Shift Supervisor and Police Commissioner are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Office of the Police Commissioner and the Shift Supervisor for direction regarding the supervisor's role in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Shift Supervisor, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.

# Village of Fishkill Police Department

## Policy Manual

### *Personnel Complaints*

---

- (h) Investigating a complaint as follows:
  - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed.
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1010.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES UNDER CIVIL SERVICE LAW  
Whether conducted by a supervisor or a member of the Professional Standards Unit, the following applies to employees covered by Civil Service Law (Civil Service Law § 75):

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the Village of Fishkill Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
  - 1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after the employee has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
  - 2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

# Village of Fishkill Police Department

## Policy Manual

### *Personnel Complaints*

---

- (h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
- (i) All employees subjected to interviews that could result in discipline have the right to have a certified or recognized union representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
  - 1. The employee shall be informed in advance and in writing of the right to representation.
  - 2. If the employee is unable to find representation within a reasonable time, the interview will proceed.
- (j) All employees shall provide complete and truthful responses to questions posed during interviews.
- (k) No employee may be compelled to submit to a psychological stress evaluator examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Labor Law § 735).

#### 1010.6.3 ADMINISTRATIVE INVESTIGATION PROCEDURES OTHER EMPLOYEES

Whether conducted by a supervisor or a member of the Professional Standards Unit, the following applies to employees:

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the Village of Fishkill Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
  - 1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after

# Village of Fishkill Police Department

## Policy Manual

### *Personnel Complaints*

---

the employee has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
  - (h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
  - (i) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
  - (j) All employees shall provide complete and truthful responses to questions posed during interviews.
  - (k) No employee may be compelled to submit to a psychological stress evaluator examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Labor Law § 735).

#### 1010.6.4 NOTICE OF CHARGES

Any charges brought against an employee shall be in writing and within the time frame prescribed by law (Civil Service Law § 75; Second Class Cities Law § 137; Town Law § 155; Village Law § 8-804).

#### 1010.6.5 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

**Introduction** - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

**Synopsis** - Provide a brief summary of the facts giving rise to the investigation.

**Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

**Evidence** - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

# Village of Fishkill Police Department

## Policy Manual

### *Personnel Complaints*

---

**Conclusion** - A recommendation regarding further action or disposition should be provided.

**Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

#### 1010.6.6 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

**Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

**Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

#### 1010.6.7 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation.

#### 1010.6.8 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

### 1010.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

### 1010.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Police Commissioner or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

# Village of Fishkill Police Department

## Policy Manual

### *Personnel Complaints*

---

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.
- (d) May be on leave without pay for no more than 30 days (Civil Service Law § 75; Village Law § 8-804).

#### **1010.9 ADMINISTRATIVE LEAVE**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Police Commissioner or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.
- (d) May be on leave without pay pending the hearing of charges (Town Law § 155).

#### **1010.10 ADMINISTRATIVE LEAVE**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Police Commissioner or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

# Village of Fishkill Police Department

## Policy Manual

### *Personnel Complaints*

---

#### **1010.11 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Police Commissioner shall be notified as soon as practicable when a member is accused of criminal conduct. The Police Commissioner may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Village of Fishkill Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

#### **1010.12 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Police Commissioner through the chain of command. Each level of command should review the report and include their comments in writing before forwarding the report. The Police Commissioner may accept or modify any classification or recommendation for disciplinary action.

##### **1010.12.1 LIEUTENANT RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Lieutenant of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Lieutenant may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Police Commissioner, the Lieutenant may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Police Commissioner, the Lieutenant shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

##### **1010.12.2 POLICE COMMISSIONER RESPONSIBILITIES**

Upon receipt of any written recommendation for disciplinary action, the Police Commissioner shall review the recommendation and all accompanying materials. The Police Commissioner may modify any recommendation and/or may return the file to the Lieutenant for further investigation or action.

Once the Police Commissioner is satisfied that no further investigation or action is required by staff, the Police Commissioner shall determine the amount of discipline, if any, that should be