

# City of Virginia Beach Police Department

## Administrative Investigation Field Guide



### **A Guide for Department Supervisors**

- Methods for Conducting Administrative Investigations
- Adjudication and Documentation of Work Performance and Disciplinary Action
- Appeal Process

*This Field Guide is Prepared and Updated by the Virginia Beach Police  
Department Internal Affairs Bureau,*

*Under the Approval of the Police Chief:* Paul W. Neudig

## Administrative Investigation Field Guide

Overview	4
Policy	4
Notification to Internal Affairs	4
Definitions	4
Duties and Responsibilities of the Internal Affairs Bureau	5
Investigative Responsibility	5
Conflict of Interest	7
Handling Citizen Complaints, Internal Investigations and Inquiries	7
Handling of Citizen Complaints	7
Handling Citizen Complaints by Way of Mediation	9
Handling Citizen Complaints Involving Use of Physical Force	11
Handling of Internal Investigations	12
Discrimination or Harassment Investigations	12
Handling of Inquiry Investigations	12
Officer Involved Shootings	13
Police Vehicle Crashes	13
Early Intervention System	13
Evaluation Threshold	14
Review and Notification	14
Intervention	15
Restricted Duty Status/Administrative Reassignment	15
Criminal Investigations of Department Personnel	15
The Role of the First Line Supervisor	16
Authority Delegated to Supervisors	17
Written Documentation of Employee Actions	17
Performance Evaluation	17
Training	17
Counseling	18
Immediate Suspension from Duties	18
Internal Investigative and Adjudication Guidelines	18
Internal Interview Guidelines	19
Garrity Warnings	20
Release of Statements/Transcripts/Files	21
Discovery	21
Disclosure of Exculpatory Evidence	21
Brady/Giglio Material	22
Administrative Investigation Tools	23
Photographs and Lineups	23
Alcohol and/or Drug Tests	23
Photograph Identification	24
Financial Disclosure Statements	24
Polygraph Examination	24
Administrative and Criminal Department Searches	24
Administrative Searches/Inspections	25
Criminal Searches	25
Investigating Potential VCIN violations	25
Investigative Documentation	26
Findings	27
Policy Review	27

## Administrative Investigation Field Guide

Required Documentation/Action When a Complaint is Sustained	27
Counseling and Discipline Process	28
Procedure for Written Reprimand	28
Memorandum of Charges	29
Notice of Disciplinary Action	29
Procedure for Suspension	30
Administrative Decrease	32
Procedure for Demotion	32
Procedure for Dismissal	33
Review Boards	34
Use of Force Board	34
Firearms Discharge Review Board	35
Captain's Disciplinary Review Board	37
Appeals and Grievances	37
Open Door Policy	37
City of Virginia Beach Grievance Policy and Procedure	37
Law Enforcement Officers Procedural Guarantees	38
Annual Review of Disciplinary Action	38
Routing of Investigative Case Files	38
Approval Procedure	41
Documents, Policies, and Directives Cited in this Text	42
Appendix A: Sample Memorandum of Charges	43
Appendix B: Sample Notice of Disciplinary Action	44
Appendix C: Internal/Citizen Complaint Check List	46
Appendix D: Missed Court/Missed Training Check List	47
Appendix E: Inquiry Case Check List	58
Appendix F: Firearms Discharge Check List	49
Appendix G: Police Vehicle Accident Check List	50

**Overview:**

This guide has been established in order to ensure the integrity of the department by establishing procedures to promote positive discipline and to provide for the prompt, thorough, and objective investigation of alleged or suspected misconduct by Department personnel. It will also serve to inform all employees of departmental procedures for the handling of administrative investigations and addressing complaints of employee misconduct.

**Policy:**

It is the policy of the Virginia Beach Police Department to accept and appropriately investigate all complaints made by citizens against the department and/or complaints relating to alleged employee misconduct or violations of departmental policies or procedures. The supervisor accepting the complaint shall ensure it is documented in writing in accordance with guidelines established in this field guide.

The Internal Affairs Bureau will be responsible for conducting all administrative investigations into allegations of employee misconduct relating to corruption, brutality, misuse of force, breach of civil rights, and criminal misconduct, unless otherwise directed by the Police Chief. They will conduct all internal investigations involving discharge of firearms or whenever a person in police custody or during interaction with police is seriously injured, attempts suicide, or dies.

**Notification to Internal Affairs**

The timely notification of significant events to Internal Affairs is crucial to ensure accurate and complete investigations. In the following cases, it will be the responsibility of the lead supervisor (Incident Commander) on scene, or designee, to contact Internal Affairs and brief Internal Affairs of the facts:

- Criminal investigation into a department member
- Arrest of a department member
- Officer involved shooting, excluding animal euthanasia
- Accidental discharge of firearms on or off duty
- Serious bodily injury/death of a suspect or citizen as a result of police action (Use of Force/Pursuit involving a crash/Etc.)

**Definitions:**

**Citizen's Complaint:** A specific allegation of dissatisfaction; misconduct; violation of law, or violations of City and/or department policy or procedure against the department or a department employee by a known citizen.

**Mediation:** An informal process in which the complainant and accused employee meet face to face with the assistance of a neutral Third party mediator to discuss the alleged misconduct. The goal of mediation is to engage in a good faith discussion with the goal of reaching a shared understanding.

**Information Case:** Citizen Complaint in which the citizen does not wish to file a formal complaint or concerns that do not rise to the level of a potential policy or criminal violation.

**Internal Investigation:** An investigation generated from within the department concerning a specific allegation of misconduct; violation of law; or violation of City and/or department policy or procedure.

**Inquiry:** A preliminary investigation generated from outside of or from within the department that is based on the need for information to determine if there has been misconduct, a violation of law, or a violation of policy or procedure.

**Firearms Discharge Investigation:** The investigation of any firearms discharge by a member, other than one that occurs as a part of authorized training or off duty during a lawful sporting activity. The use of the Sage will not be considered a firearms discharge but will be treated as a less lethal impact weapon.

**Police Vehicle Crash Investigation:** An investigation generated from within the department regarding crashes involving police vehicles resulting in property damage, personal injury, or death.

**Duties and Responsibilities of the Internal Affairs Bureau (CALEA 52.1.2, 52.1.4, 52.1.5, 52.2.2, 52.2.4)**

Although the Internal Affairs Bureau is primarily responsible for conducting investigations into allegations of employee misconduct, each command is also responsible for managing and supervising investigations specifically assigned to them.

**The Internal Affairs Bureau shall be responsible for conducting all administrative investigations into:**

- Acts that seriously undermine community trust, public safety, or the image of the department
- Biased based policing/racial profiling
- Criminal law violations by department personnel
- Discharge of firearms (excluding animal euthanasia and negligent discharge) and improper pointing of a firearm
- Dishonesty
- All excessive or inappropriate level of force
- Improper arrest or seizure
- In-custody deaths and serious injuries to a citizen
- Police vehicle accidents involving serious injuries to personnel or civilians
- Sexual misconduct
- Workplace harassment, workplace violence
- Any complaint referred by the Police Chief

**The appropriate precinct/bureau command shall be responsible for conducting all relatively minor administrative investigations. These may include, but are not limited to:**

- Discourtesy, profanity
- Minor violations of department policy, procedure, and training standards ie. failure to secure department property, departmental reports, sleeping on duty, insubordination, report for duty
- Negligent/accidental firearms discharges and shots fired at animals
- Police vehicle crashes not resulting in death or serious injury to department personnel or citizens
- Unsatisfactory performance/failure to take necessary police action
- Other allegations not rising to a serious level

The Internal Affairs Bureau shall maintain an accounting of all administrative investigations and will make this information available to the Chief upon request. The Internal Affairs Bureau falls under the command of the Deputy Chief of the Administrative Division who reports directly to the Police Chief and will notify the Police Chief of any investigation of a significant nature or one that is likely to attract public and/or media attention.

The Internal Affairs Bureau shall act as the clearinghouse for the documentation and assignment of all administrative investigations to department supervisors. Upon initial notification of a citizen complaint, they shall correspond in writing with the complainant to acknowledge receipt of the complaint. Upon return of an administrative investigation case file from the Chief, they shall notify complainant of the disposition in writing and record the findings accordingly. If the investigation goes beyond timelines established in this field guide, they will make written notification to the complainant advising them of the extension.

The Internal Affairs Bureau shall ensure that all administrative investigations and reports are considered as confidential material and shall not be accessible to unauthorized department personnel or the public. This information shall be available only to appropriate command personnel, the City Attorney's Office, Risk Management representatives, and other individuals specifically authorized access by the Police Chief for official purposes or required access by law or court order. This information may be released to federal agencies investigating allegations regarding the police department, in response to a subpoena, or in response to discovery in legal proceedings. When requests for such files are received in association with such proceedings, responses will be in accordance with applicable law and the guidance of the City Attorney's Office.

The Internal Affairs Bureau shall prepare annual statistical summaries relating to conducted investigations for the purpose of disseminating this data to the public and/or media via the office of the Police Chief.

The Internal Affairs Bureau will be tasked with the annual review of this field guide to ensure it is in compliance with applicable codes and policies and is in keeping with the current practices of the department. They will also ensure web pages and brochures maintained and distributed by the department with respect to the citizen complaint process are current and readily available to the public.

## **Conflict of Interest**

The Virginia Beach Police Department, to sustain the integrity of the department, shall conduct full, fair, and impartial investigations of all complaints or allegations lodged against employees of the department. It is for that reason investigations shall be conducted without any potential or actual conflicts which could result in an appearance of impropriety and affect one's professional integrity or ability to investigate matters independently and objectively without any biases or personal interest.

Examples of conflicts of interest that may arise related to an investigation, involving the involved subject and/or investigator, may include, but are not limited to:

- Family or close family ties
- Godparent/child involvement
- Close relationship to either the complainant or witnesses
- Mutual off-duty business relationship
- Frequent or regular social interactions outside of the workplace

In connection with any actual or possible conflicts of interest, the assigned investigator shall disclose the potential conflict with the responsible command prior to starting the investigation. If either the investigator or supervisor feels a conflict of interest exists, every effort to reassign the investigation will be made.

The assigned investigator shall sign the Conflict Waiver Notice (PD1-F) for all Internal Investigations, Citizen Complaints, and Inquiries. This signed waiver will be included in the case file.

## **Handling Citizen Complaints, Internal Investigations, and Inquiries (CALEA 52.1.1, 52.1.2, 52.2.4 A)**

### **Handling of Citizen Complaints**

The department shall investigate all citizen complaints against department employees to equitably determine the validity of the allegations unless they are resolved through mediation. Concerns brought by a citizen within one year of the alleged incident shall be documented as a citizen complaint or inquiry as appropriate. Concerns brought by a citizen a year or more after the alleged incident shall be handled as an inquiry, unless they involve the following: complaints regarding corruption, brutality, misuse of force, breach of civil rights, criminal misconduct, abuse of position, or arrest, and search & seizure, which shall be documented as a citizen complaint and investigated regardless of the time elapsed.

All employees of the department who receive a citizen complaint shall immediately, and in a courteous and agreeable manner, direct the citizen to a supervisor. All supervisors in the department shall cooperatively and politely accept all received citizen complaints. Complainants should not be told to contact the Internal Affairs Bureau in lieu of that supervisor documenting the complaint.

All citizen complaints pertaining to departmental policies or procedures, or alleged employee misconduct shall be documented and investigated by the department, unless handled through mediation.

## Administrative Investigation Field Guide

- A. Complaints may be accepted in person, via the Internet, email, over the telephone, in writing or from the City Manager's Office.
- B. Anonymous information or information from citizens who wish their names to be held in confidence shall be accepted for investigation. This type of information will be initially recorded as an inquiry.
- C. Citizen complaints that allege a criminal violation by the employee will be referred to the detective bureau for investigation. Following the conclusion of the criminal investigation/prosecution, the administrative investigation will be initiated to examine administrative violation(s).
- D. Every reasonable effort will be made to facilitate the convenient, courteous, and prompt receipt and processing of complaints.
- E. The possibility of a civil claim or suit will not affect the receipt of a complaint or the conduct of an administrative investigation.
- F. Complaints shall not be accepted when the allegations result from off-duty conduct, unless the alleged incident adversely affects the function or image of the department; violates local, state, or federal law; and/or involves a violation of departmental rules and regulations. Supervisors should be mindful, if the employee asserts his/her authority as a law enforcement officer during the off-duty encounter/conduct (examples: display of badge, announcement that they are a law enforcement officer), then the matter shall be treated as if the employee were on duty.

Complaints which solely arise from a criminal or traffic charge against the citizen, to be adjudicated by the court, that do not specifically allege misconduct by employees, do not come within the purview of this directive.

While it is generally obvious when a complaint alleges misconduct on the part of an employee; complaints concerning lack of service, perceived inadequate response, or improper procedures are sometimes more difficult to identify. In many instances, a citizen may be merely requesting information or clarification of a policy or procedure. In such cases, the citizen should be given a thorough explanation of the procedures or law involved in the situation by the supervisor receiving the citizen complaint.

If that citizen insists on making a complaint and the supervisor believes that the information provided does not meet the criteria of a citizen complaint, the supervisor shall accept the information and document it via the BlueTeam reporting system. The Internal Affairs Bureau shall generate a citizen complaint or inquiry file for investigation for the appropriate command or conduct the investigation, if required by to do so by policy. If the employee involved is assigned to a command other than where the complaint is taken, the report and all supporting documents shall promptly be forwarded to the command of the involved employee or disposition.

In the interest of providing quality customer service and ensuring negative employee behavior is not disregarded, supervisors will not require citizens to personally appear to make a complaint. However, the integrity of the investigation must be maintained by whatever means are available.

If a citizen refuses to meet with the supervisor receiving the complaint, either at the precinct or other location, the supervisor is strongly urged to permanently document the content of the conversation with the citizen by either electronic or mechanical means. This could include the complainant preparing a written statement, or the supervisor recording the conversation.

Regardless of how the complaint is filed, a BlueTeam report shall be completed by the supervisor, summarizing the incident on the complainant's behalf. The entry shall include the citizen's full name, address, phone number, and email address, if available. The entry should also include all relevant information regarding the citizen's concerns or complaint.

The supervisor shall also advise the complainant of departmental procedures for the processing and investigating citizen complaints. Regardless of whether the initiating supervisor intends to personally handle the investigation into the matter, the BlueTeam report shall be immediately forwarded via the chain of command to the Internal Affairs Bureau for entry into the appropriate records management system.

At that time, the Internal Affairs Bureau shall assign the case a case tracking number, incorporate the case into an appropriate case folder, and distribute to the assigned investigator. The investigator completing the case data entry will initiate a letter to the complainant acknowledging receipt of the complaint.

When a complainant requests that a complaint be withdrawn, unless it is one of the prescribed Internal Affairs Bureau required investigations, the complaint shall be concluded; denoting Complainant Request to Withdraw. If the complainant becomes uncooperative or unreachable, despite persistent efforts on the part of the investigator to establish the merits of the complaint, such actions will be documented in the investigative report.

Upon the conclusion of all Citizen Complaints, the investigator will initiate a letter to the complainant outlining the findings of the complaint. The letter will also contain the Investigation Review Panel pamphlet with information on the appeal process through the Investigative Review Panel (IRP). Additionally, IAB will notify the City's Office of Human Resources of the disposition of all citizen complaints, as required for compliance with the Investigation Review Panel process. If the IRP initiates a review hearing, the Commanding Officer of IAB or designee will present the case as the Department's representative. Any recommendation made by the IRP, through the City Manager's office, will be handled by IAB. If any corrective action is taken due to those recommendations, those actions will be documented and report back to the City Manager's office.

### **Handling Citizen Complaints by Way of Mediation**

The Virginia Beach Police Department recognizes the value of mediation. When allegations of employee misconduct are brought to its attention, the Internal Affairs Bureau will work to facilitate mediation, when appropriate, between complainants and accused employees, utilizing the services of a mediator. Citizens may not pursue mediation and an Internal Affairs investigation on the same complaints that are eligible for mediation; instead they must elect which procedure to use.

The Commanding Officer of Internal Affairs or designee will review complaints brought to their attention to see if they warrant consideration for mediation. If a matter is determined to be potentially eligible for mediation, Internal Affairs will contact the complainant to see if there are any additional details that the complainant wants to include in the complaint.

The Internal Affairs Bureau will also review the complainant's complaint history and current or past litigation with the City of Virginia Beach. If there is current litigation, the City Attorney shall be consulted prior to proceeding. Past litigation will be used in screening; however, it will not automatically make a case ineligible for mediation.

Generally, cases involving courtesy, minor allegations of unsatisfactory work performance (to include Inquiries) and biased based policing complaints may be eligible for mediation.

Complaints involving the following circumstances will not be eligible for mediation:

- If force was used
- Allegations involving criminal misconduct
- An employee was assaulted
- A lawsuit has been filed
- The complainant was injured because of employee actions
- Ethnic slur directed at a person

If the complaint is determined to be eligible for mediation, but the complainant has a pending court case with the accused employee, then the mediation will only take place after the case has been adjudicated in court.

Generally, an employee is eligible for mediation unless they have had two prior complaints with similar allegations within the past 12 months. The Commanding Officer of Internal Affairs, or designee, will make the final determination whether a case is eligible. If deemed eligible then the employee will be contacted by the Internal Affairs Bureau. A determination will be made whether the employee is interested in participation in the mediation program. The employee will be made aware of the following:

- Name of complainant
- Summary of allegation
- Notification that the complaint has been approved for mediation
- Explanation of the mediation program, that the process is voluntary and that upon completion the case will appear in IAPro as mediated.

The complainant and employee will be advised that participation in the mediation process is completely voluntary and that if they participate, they are to act in good faith. Good Faith means they will actively listen to the other party and actively participate in the discussion. Good Faith does not require an agreement. The mediator has the final authority to determine whether participants are acting in good faith.

If the mediator determines the employee is not acting in good faith, then the mediator may end the session and return the complaint to Internal Affairs for investigation. If the mediator determines the complainant is not acting in good faith, then the mediator will close the case as “Mediated” with no further action. Since participation is voluntary, either party may withdraw before mediation has convened. Mediation will be considered “convened” once the parties have assembled and the session has begun.

In the event either party decides they do not wish to participate in mediation before mediation is convened, they will be advised that the complaint will be referred back to the Internal Affairs Bureau to handle according to normal Internal Affairs procedures. The fact they did not choose to participate will not be held against them.

Prior to scheduling mediation, the complainant will be advised in writing that they have the right to mediate a complaint or have the Internal Affairs Bureau review the complaint in accordance with their normal procedures; however, they may not use mediation and an Internal Affairs investigation

on the same issue. They will also be advised that in electing to mediate a complaint the complaint will not be eligible for the Investigation Review Panel (IRP) because in that case there is no Internal Affairs investigation to review. However, should either party withdraw from mediation before it is convened, then the complaint, with the approval of the complainant, will be referred back to the Internal Affairs Bureau for review in accordance with their normal procedures. In that situation, at the conclusion of the investigation, if any, the IRP process would be applicable. Additionally, the complainant will be advised that the purpose of mediation is to address the complaint, which may or may not result in resolution of the complaint and that mediated complaints shall not result in a monetary award.

If the complainant fails to appear for a scheduled mediation without good cause, then the complainant will be given one final opportunity to reschedule the mediation session. If the complainant fails to appear a second time without good cause, they will not be allowed to reschedule again, and the case will be closed.

If the employee fails to appear for a scheduled mediation without good cause, they will be given one opportunity to reschedule. If the employee fails to appear a second time without good cause, the complaint will be returned to the Internal Affairs Bureau for investigation.

Documents created because of mediation may be subject to release under the Freedom of Information Act; however, some specific portions may be excluded from mandatory disclosure. For example, the identity of the officers and medical information may be exempt from required disclosure. Nevertheless, for mediation to be successful, all parties must feel free to speak candidly. Therefore, officers are assured that an apology or admittance of wrongdoing will generally not be used against them by the department.

Except for the parent(s) or guardian(s) of a juvenile or dependent adult, the complainant and employee do not have the right to have a support person or legal representation present during the mediation.

Complaints that are finalized as described above through good faith mediation will be documented by the Internal Affairs Bureau as “mediated” and concluded using the IAPro software. Documentation will consist of the name of the complainant, the involved officer(s), the specific allegation or listing as an Inquiry, a summary of the original complaint, and the mediation agreement.

### **Citizen Complaints Involving Use of Physical Force**

The Virginia Beach Police Department utilizes a Use of Force Board to provide recommendations for any Use of Force that meets the below criteria:

- A. Any Use of Force that results in serious injury or death of a citizen. Serious injury will be defined as any injury inflicted by an officer requiring the citizen to be admitted (overnight) to a hospital for care.
- B. Any Use of Force specifically requested for review by a command, Internal Affairs, Deputy Chief or the Chief

The board will make the following recommendations based on a simple majority for each case reviewed:

- Does or Does Not Comport with Training
  - Recommendations for additional training

- In or Out of Policy

Once a case is reviewed by the board, the recommendation is included with the case file and sent to the command for adjudication. Further information can be found within General Order 5.01, Use of Force.

### **Handling of Internal Investigations**

An internal investigation shall be investigated at the command level or by the Internal Affairs Bureau as set forth herein. Unless otherwise directed by the Police Chief, the Internal Affairs Bureau shall be responsible for conducting all administrative investigations into allegations of:

1. Employee misconduct relating to corruption, brutality, misuse of force, breach of civil rights, and criminal misconduct.
2. Discharge of firearms or whenever a person in police custody receives a serious injury, attempts suicide, or dies.
3. Criminal violations, particularly when an employee is arrested.

An internal investigation can further result from an upgraded inquiry or may be authorized/requested by any command authority within the department.

Any command authority within the department may initiate internal investigations regarding other allegations. Notification through the chain of command to the Internal Affairs Bureau shall be made as soon as practical. All internal investigations shall be documented on the Administrative Investigation Form (PD-1A) and the Investigative Disposition Form (PD-1B).

Regardless of whether the initiating supervisor intends to personally handle the investigation into the matter, a BlueTeam report shall be forwarded to the Internal Affairs Bureau for entry into the appropriate records management system. At that time the Internal Affairs Bureau shall assigned a case tracking number, incorporated into an appropriate case folder and distribute to the assigned investigator.

### **Discrimination or Harassment Investigations**

Any allegations of discrimination or harassment involving violations of [General Order 2.06, Prohibition of Discrimination and Harassment](#) and/or [City HR Policy 6.06](#), to include retaliation claims will be handled as follows: The command receiving the complaint will forward the information to the Internal Affairs Bureau for an initial screening of the complaint (i.e. basic facts – who, what, when, where, why, etc.). The Internal Affairs Bureau will screen the facts learned with the Human Resources Coordinator assigned to the Police Department. The Human Resources Coordinator assigned to the Police Department will then review the facts with the HR Employee Relations Manager as to whether the complaint requires an EEO investigation. If the complaint requires an EEO investigation, the investigation shall be conducted by the HR Employee Relations Manager. If an EEO investigation is not required, the complaint will be returned to the Internal Affairs Bureau for administrative investigation tasking.

### **Handling of Inquiry Investigations**

An inquiry may be initiated as the result of:

1. An investigation of an employee by an outside agency;
2. A report of a minor traffic violation by an employee;

3. Notification of a lawsuit against either an employee or the City of Virginia Beach as a result of an employee's actions while performing his/her duties;
4. At the request of the City Attorney's Office or City Risk Management Division, in which case the information will be treated as a work product protected under lawyer/client privilege;
5. As a result of a citizen's insistence a "complaint" be filed when there is clearly no misconduct or policy violations.

Matters brought to the attention of the department which may impact the department's integrity and are not specific enough to warrant an internal investigation, shall be reviewed via an inquiry. The inquiry may be based on information received from any known or unknown source.

All findings and appropriate signatures shall be included on the PD-1C, Inquiry Report Form. Depending upon the seriousness of the situation and the amount of information developed, the inquiry may be upgraded to an internal investigation. If a commanding officer, Deputy Chief or the Police Chief determines that the inquiry must be upgraded to a citizen complaint or internal investigation, then the case will be appropriately assigned following the procedures herein. If the employee involved is assigned to a command other than where the inquiry report is taken, the report and all supporting documents shall be immediately forwarded to the command of the employee involved for disposition.

All completed investigations shall ultimately be forwarded to the Internal Affairs Bureau for logging and storage in accordance with record retention guidelines. Inquiries may be "concluded" by the Executive Officer of the Internal Affairs Bureau or the commanding officer of the named employee without the necessity of the officer being interviewed. However, the concluding authority shall notify employees who are named in an inquiry that an inquiry has been conducted.

### **Officer Involved Shootings**

In the case of an officer involved shooting, the involved members will follow the guidelines outlined in General Order 5.01. Specific direction as to command authority, at scene investigative roles and responsibilities, officer wellness and support, the criminal investigation and the internal investigation are located in the Officer Involved Shooting/In-Custody Death Field Guide.

### **Police Vehicle Crashes**

Any on-duty supervisor can be assigned to investigate police vehicle Crashes and prepare and submit all required documentation via the BlueTeam system. The involved employee's command will determine if the crash was preventable or non-preventable. A BlueTeam crash report will immediately be forwarded to the Internal Affairs Bureau for entry into the appropriate records management system. If disciplinary action in the nature of a written reprimand or greater is to be taken, the case will be assigned a case tracking number, a PD1CVA will be incorporated into an appropriate case folder, along with the PD1B and distributed to the assigned investigator.

### **Early Intervention System (CALEA 35.1.9 A, B)**

It is the policy of the Virginia Beach Police Department to provide the appropriate assistance to officers who may be experiencing job performance difficulties and/or are subject to heightened levels of risk by virtue of their position and/or performance history. The Department shall employ an Early Intervention System (EIS) in an effort to identify officers who may be in need of such assistance. A comprehensive Early Intervention System is an essential component of good discipline in a well-managed law enforcement agency.

The Virginia Beach Police Department utilizes a computerized Early Intervention System that captures various indicators of behavior that will help the Department identify employees who may be considered at risk and who may require agency intervention efforts before a crisis occurs that could ruin a career and/or erode community confidence.

Through the use of IAPro, BlueTeam and EIPRO, the Department will have the ability to track these indicators and automatically provide notification of those employees engaging in potentially problematic behavior before they result in improper performance or conduct. The early identification of such employees and a menu of intervention actions can increase agency accountability and offer employees a better opportunity to meet the agency's values and mission statement.

The Early Intervention System is under the purview of the Internal Affairs Bureau. The Internal Affairs Investigative Unit Lieutenant shall be the System Administrator. The Early Intervention System tracks selected incidents that will be used as performance measures and shall include, but not be limited to citizen complaints, internal investigations, vehicle pursuits and use of force incidents as reported in accordance with the provisions of this Field Guide, General Order 5.01 (Use of Force), and 10.04 (Vehicle Pursuits).

EIS is a tool designed to assist the Department in identifying officers in need of assistance. It provides supervisors with the opportunity to have one on one conversation with subordinates that the Early Intervention System has identified as our most "at risk" employees.

The Early Intervention System is not a tool for discipline or punishment, but a risk mitigation tactic for both the agency and the employee; additionally, it is not intended to replace the responsibility and authority of the immediate supervisor whose role it is to observe, monitor, guide and when necessary, correct the actions of his/her subordinates.

### **Evaluation Threshold (CALEA 35.1.9 C)**

The Early Intervention System's functionality is based on alerts. System alerts are triggered by linking an employee to an incident. When the number of incidents exceeds thresholds that have been set by the System Administrator, the Early Intervention System is triggered, and an alert associated with the employee is activated.

Thresholds and cumulative thresholds shall be evaluated and assessed for effectiveness at least annually. The System Administrator will have the capability of adjusting the threshold levels as needed.

Reaching a particular threshold level is not an indication of wrongdoing or poor performance on the part of the officer. The threshold alert is merely a mechanism designed to allow the Department to conduct a closer inspection of potential risk, poor performance and/problematic behavior on the part of the officer and attempt to develop strategies based upon established policies and procedures for intervention to address the existing issues.

### **Review and Notification (CALEA 35.1.9 D)**

When an alert has been generated, the officer's supervisor will be forwarded the alert and supporting documentation via BlueTeam. The supervisor will evaluate the alert and respond by attaching a memo to the BlueTeam report. The memo should address and document the following:

- A summary of what triggered the alert.
- Contextual data on the officer and his/her work environment.

## Administrative Investigation Field Guide

- Performance Data
  - Assignment
  - Other areas of concern, such as other alerts, administrative investigations, missed court or training, etc. This data can be obtained via the EIPro software or by contacting Internal Affairs.
- Feedback from a meeting with the employee where the alert and contextual data is discussed.
  - Consideration for additional training or assistance.
    - Refresher or Specialized Training
    - EAP, Counseling or Peer Counseling

Once completed by the first line supervisor, the report will be forwarded through the officer's chain of command via BlueTeam for review, comment, and approval. Once satisfied with the alert's adjudication, the command will forward the alert back to Internal Affairs, via the appropriate command's Deputy Chief.

This system has the capability of tracking supervisors based on the actions of their assigned employees. Reports can be generated indicating the number of incidents that are linked to involved officers assigned to a particular supervisor during a defined time period, thus identifying supervisors who have an unusual number of employees demonstrating performance difficulties. Executive leadership can then identify subordinate supervisors who demonstrate patterns of leadership that may call for intervention. Additionally, executive leadership may require greater accountability from those supervisors in an effort to reduce the number of officers needing assistance.

In an effort to evaluate the system's effectiveness, an annual analysis will be submitted to the Police Chief and periodic workgroups, consisting of representatives from various commands, will assess current and proposed threshold settings.

### **Intervention (CALEA 35.1.9 E, F)**

Interventions available to the employee include, but are not limited to, remedial training, EAP, Peer Support and Counseling as outlined in General Orders 2.05 (Conditions of Work), 2.07 (Discipline), and 2.15 (Peer Support). After the appropriate intervention, the immediate supervisor should continue to monitor the involved officer's performance and document any additional actions taken to correct those behaviors found to be contrary to the Department's values and mission statement.

### **Restricted Duty Status/Administrative Reassignment**

An employee may be placed on a limited duty status or an administrative reassignment due to an internal or criminal investigation as part of plan to address performance concerns, or in response to other extenuating circumstances. The PD-11, Restricted Duty Status Guidelines, addresses specific guidelines such as attendance of department sponsored training, court, part-time, and credentials.

### **Criminal Investigations of Department Personnel**

If an investigation of a department member focuses on criminal matters, an appropriate criminal investigative supervisor shall investigate the allegation. All commands must be mindful that

compelled statements may taint subsequent criminal proceedings. A PD18 and PD3 will be completed, fully documenting all investigative efforts.

All criminal investigations will culminate with an OCA Felony Case Screening Report and command cover letter, summarizing the details of the allegation and investigative findings. Once the OCA screening is complete, all documentation will be turned over to the Internal Affairs Bureau.

Whenever a member is likely to be criminally prosecuted, the criminal investigation takes priority and any non-criminal interviews will be deferred until the criminal investigation is complete.

The Internal Affairs Bureau shall conduct an independent administrative investigation, which shall be restricted to the collection of facts for administrative purposes only and shall not be used for prosecution of criminal violations.

The Internal Affairs Bureau and/or the commanding officer of the affected employee will evaluate criminal justice data system access, network access, and work site access for appropriate restrictions. They will work with the Support Division for VCIN/NCIS and building access restrictions and the Planning and Analysis Coordinator for network access.

When an employee is arrested for any criminal offense, the investigating command or arresting/parent command, if we are not the lead agency, will ensure the following notifications are made:

- Police Chief
- Executive Staff
- Internal Affairs Bureau Lieutenant
- Public Affairs Office via Chief's Aide
- Legal (Public Safety Attorney and Office of Commonwealth Attorney)
- Support Division Lieutenant (VCIN/NCIC access, operational access to buildings, and internal network access)

### **The Role of the First Line Supervisor**

The primary responsibility for maintaining and reinforcing employee conformance with the standards of conduct of this Department shall be with the employee and the first line supervisor. Supervisors shall familiarize themselves with the employees in their unit and closely observe their general conduct and appearance on a daily basis. Supervisors should remain alert for indications of behavioral problems or changes that may affect an employee's normal job performance. The supervisor should document such information. Where a supervisor perceives that an employee may be having or causing problems, the supervisor should assess the situation and determine the most appropriate action. A supervisor may recommend additional training to refresh and reinforce an employee's skills. Often the most effective tool a supervisor can utilize when dealing with a subordinate is counseling. Counseling may be defined as subordinate centered communication that outlines actions necessary for subordinates to achieve individual and organizational goals.

### **Authority Delegated to Supervisors (CALEA 52.2.7)**

Counseling may be used by the supervisor as follows:

1. To determine the extent of any personal or job problems that may be affecting performance and to offer assistance and guidance.
2. To discuss minor and infrequent rule violations and to discuss the substance and importance of the rules with the employee.

The supervisor shall document all instances of counseling or additional training used to modify an employee's behavior. Any supervisor may relieve from duty any subordinate personnel within his/her command when such action is considered to be in the best interest of the individual, the department, or the public for such a period as is necessary to receive direction from a higher level of authority.

Whenever actions by subordinate personnel are sufficiently improper and contrary to the best interest of the department or public that they require immediate correction, any supervisor may cross lines of authority and issue orders to correct the situation.

The supervisor shall report the incident to the employee's immediate supervisor as soon as possible thereafter and follow through with a memorandum to the employee's command. In incidents of a less serious nature that do not require immediate corrective action, the supervisor should document the details on a memorandum and forward it to the employee's command.

### **Written Documentation of Employee Actions**

Organizational discipline within the Virginia Beach Police Department is crucial to the accomplishment of the agency's mission. The Virginia Beach Police Department has established a variety of systems designed to promote and reward behaviors by employees that exemplify organizational values and promote the public trust. Alternatively, the agency has also established systems to correct behaviors by employees that are contrary to the mission, values, and policies of the Department.

### **Performance Evaluation**

As described in General Order 2.10 (Performance Feedback), the performance feedback system is a means by which employees and supervisors review performance as it relates to the mission and values of the Department and assess needs for training and career development. The performance evaluation system promotes organizational discipline through the review of accomplishments, needs, and future plans for the development of the employee.

### **Training (CALEA 26.1.4 A)**

Training of agency personnel in the performance of duties is fundamental to organizational discipline. Training communicates standards and identifies behaviors that define the expectations of the agency. Training in job related functions is mandatory for personnel entering the agency. Periodic in-service training is mandated for certain positions throughout the organization.

In situations where desirable standards relating to job performance or behaviors are not met, training or remedial training may be utilized as a means for increasing the level of performance by employees. Such retraining will be in the interest of promoting organizational discipline, but not considered disciplinary action.

Supervisors who wish to provide remedial training to employees may arrange for and schedule the training through the Professional Development and Training Bureau. Attendance and completion of the remedial training will be documented by the employee's supervisor.

### **Counseling (CALEA 26.1.4.B)**

The City of Virginia Beach and the Virginia Beach Police Department promotes open communication in the workplace. Supervisory personnel are encouraged to maintain open lines of communication with employees at all times. In situations where desirable standards relating to job performance or behaviors are not met, counseling by the supervisor on performance standards and job expectations is often an appropriate remedy. Counseling is not considered disciplinary action. Counseling should be documented using the MakeNote system as described in General Order 2.10, (Performance Feedback).

### **Immediate Suspension from Duties**

In accordance with Virginia State Code [9.1-505](#), the Chief, or his/her designee, has the right to immediately suspend an employee without pay if the employee's continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the Department or the public. This code section also allows for the immediate suspension of an employee for refusing to obey a direct order issued in conformance with the agency's written and disseminated regulations. In such a case, the law-enforcement officer shall have the right to appeal the suspension under the Virginia Law Enforcement Officer's Procedural Guarantees or the City's grievance policy.

### **Internal Investigative and Adjudication Guidelines (CALEA 35.1.9 A, 52.2.3)**

No complaint shall be investigated by persons, witnesses, or potential witnesses, named in or implicated by the complaint. The investigator assigned will notify the employee's command as soon as practical following assignment of the investigation. Any recognized and appropriate investigative techniques may be employed in pursuing a meaningful and objective investigation. All physical evidence connected with each case will be gathered including; photographs, pertinent records, background evidence, etc.

If the complainant becomes uncooperative, despite persistent efforts on the part of the investigator to establish the merits of the complaint, such actions will be documented in the investigative report summary.

Every effort shall be made to complete each investigation in a period of less than **forty-five (45) calendar days**. If the investigator anticipates the investigation will not be completed within forty-five (45) calendar days, a **thirty (30) day extension**, per request, may be granted by the division commander in those cases where extenuating circumstances exist. Any request for an extension shall be in writing.

The complete investigative file will be forwarded to the appropriate command/precinct/bureau who, after consultation with the appropriate Deputy Chief, and when applicable the Police Chief, will determine a disposition. In addition to recommendations regarding findings, the command should include any recommended changes in policies, as well as the need for any new or additional training.

If the case file is assigned to the command for adjudication only, it shall be returned, via the appropriate division commander, to the Internal Affairs Bureau within **thirty (30) calendar days** of receipt, unless an extension is granted, via the Internal Affairs Bureau. A **thirty (30) day extension**, per request, may be granted by the division commander in those cases where extenuating circumstances exist.

If the case file is assigned to the command for investigation and adjudication, they will be afforded the **forty-five (45) calendar day** investigation period and the **thirty (30) calendar day** adjudication period.

Should the investigation or adjudication continue beyond the initial timelines, the complainant and the accused employee shall be contacted and advised of the extension. If the command assigned the investigation is not the Internal Affairs Bureau, it will be the responsibility of the assigned commanding officer to ensure the Internal Affairs Bureau is made aware of the requested extension. It will be the responsibility of the Internal Affairs Bureau to make notification to the complainant. The accused employee shall be notified of the extension by the investigating supervisor. US Mail and/or email will normally be utilized to notify the complainant in writing in order to ensure delivery.

The time periods set forth for conducting administrative investigations and adjudication are intended as guidelines in the interest of departmental efficiency and exceeding these guidelines shall not be cause for the closure of cases or the overturning of disciplinary recommendations or action. Examples of circumstances that may necessitate an extension are as follows: Complexity of case, large number of witnesses, large volume of transcriptions necessary, employee extended leave, human resources/legal review, Use of Force Board Review and/or the employee grievance process is utilized.

### **Internal Interview Guidelines (CALEA 52.2.5)**

Before discussing the allegations with, and prior to interviewing the *accused* employee, the *accused* employee shall:

- Be notified that they are being investigated/questioned concerning a citizen complaint or internal investigation.
- Be provided a summary of the allegation(s).
- Shall be made aware of the information contained within the departmental Administrative Notification (PD-254), also known as the "Garrity Statement". The employee shall sign an Administrative Notification Form once it has been reviewed with them. This notification is only given to accused officers.

The investigator shall comply with all provisions of Virginia Code [9.1-500 to 9.1-507](#), Law Enforcement Officer Procedural Guarantees.

If practical, all statements should be audio and/or video recorded.

Whenever a recorded statement or recorded interview is made with a complainant, witness, or employee, the following information will be part of the preamble:

- a) Name of interviewer;
- b) Location of interview (if a taped phone conversation, number called);

- c) Date and time;
- d) Name of person being interviewed;
- e) Names of anyone else present;

Any pre-interviews (unrecorded preparatory interviews) with departmental personnel will only include an explanation of the process and procedure of the questioning. Elements of the case or cases being investigated shall not be discussed at this time.

The interview of all accused employees shall be transcribed, unless there is an equipment malfunction. In those cases, a summary of the interview shall be prepared. Other interviews shall be transcribed as needed. All complaints that are mandated by policy to be investigated by Internal Affairs shall be recorded both audibly and by video, as long as the equipment to do so is both available and functioning properly.

If a recorded statement is lost, for whatever reason, the procedure will be to notify the complainant and explain what has happened. The complainant will be asked if he/she wishes to have the interview re-recorded or the complainant will have the option to read a prepared summary of the original interview. If the complainant is in agreement with the summary and does not wish to be re-recorded a notation will be made in the file. If the complainant does wish to have their statement re-recorded that will be arranged by the investigator. A notation will be made in the file containing all the decisions made with respect to this aspect.

Transcribed interviews: If a verbatim transcript is prepared, employees shall review their transcribed statements and confirm the accuracy of the transcription. The transcript may be reviewed in the Internal Affairs Bureau or by electronic means (e-mail). At the request of the interviewed employee, the audio file of their interview will be provided in person or by electronic means. Minor corrections may be made and initialed by the employee; however, corrections that change the meaning of the statement are prohibited, unless a review of the recording discloses an error in transcription. The interviewing investigator shall sign and date the transcribed statement, indicating it has been reviewed.

Should a litigation hold notice be received due to legal action or the possibility of legal action against the City, the department, or any of its members, any recorded statements in the possession of the department that pertain to the pending litigation shall be held until disposal is authorized by the City Attorney's Office.

### **Garrity Warnings**

In *Garrity v. New Jersey*, the court established rules regarding instances where police officers are compelled to provide statements. As such, all employees shall be compelled to truthfully answer questions that are related to their duties or fitness. General Order 1.05, Rule 38 states, "No member shall knowingly make a false statement to any department supervisor or city official. Upon the order of the Chief, the Chief's designee, or a supervisory member, members shall truthfully answer all questions specifically directed and narrowly related to the scope of employment and operations of the Department which may be asked of them." Any refusal by personnel to provide truthful information, answer questions, and/or fully cooperate during an administrative investigation may be cause for disciplinary action up to and including termination.

Because members are required to truthfully answer all questions related to their duties or fitness under penalty of discipline up to and including termination, the answers given during the investigation of an administrative matter, and derivative information received from such answers, shall not be used against the employee in any related criminal proceeding.

Should an employee refuse to give a statement of facts concerning their full knowledge of the matter under investigation or answer a question, the investigating supervisor shall order the employee to answer the question or give a statement of facts concerning their full knowledge of the matter under investigation. If the employee refuses the order, the investigator shall immediately contact a supervisory member of the employee's command who shall relieve the employee from duty pending further action by the Police Chief.

### **Release of Statements/Transcripts/Files**

Upon request, an employee or citizen may receive a copy of his/her own interview transcript. Internal investigative files, transcripts and other attachments shall not be subject to release under FOIA and shall not be voluntarily released or disclosed by the department unless ordered to do so by competent authority or in accordance with applicable law.

However, this information shall be available to appropriate command personnel, the City Attorney's Office, Risk Management representatives, and other individuals specifically authorized access by the Police Chief for official purposes. This information may also be released to federal agencies investigating allegations regarding the police department, in response to a subpoena, or in response to discovery in legal proceedings. When requests for such files are received in association with such proceedings, responses will be in accordance with applicable law and the guidance of the City Attorney's Office.

### **Discovery**

A motion for discovery is a legal paper filed by the defendant or the defense that requires that the prosecution provide certain requested information or material listed in the legal document. The Office of the Commonwealth's Attorney prepares responses to criminal discovery requests for the matters they are involved in. The OCA is required to turn over all defendant statements, made to law enforcement, to the defense in each case. Therefore, when a defendant has legal charges pending, prosecuted by the OCA, and that defendant has made a complaint to the Internal Affairs Bureau, it is the duty of IA to share the transcript of their statement with the OCA. This also holds true to any defendant statements made to sworn personnel at the commands. Whether it is an OCA or defendant request, the officer responding to a discovery request must share all statements made to law enforcement personnel.

### **Disclosure of Exculpatory Evidence**

In 1963, in *Brady v. Maryland*, the Supreme Court of the United States held that prosecutors must disclose any exculpatory evidence to the accused that is "material" to his/her guilt or punishment. If any information of an exculpatory nature is discovered during the course of an investigation, regardless of type, a summary of the exculpatory information shall be relayed as soon as possible to the prosecuting attorney. Additionally, if statements of witnesses who have not been required to sign an Administrative Notification advising of Garrity warnings have provided the exculpatory information, copies of those statements may be released to the prosecuting attorney.

Exculpatory evidence may include information favorable to any person charged with a criminal offense, whether directly related to an offense charged, or which might reasonably tend to mitigate the penalty for an offense.

When the Office of the Commonwealth Attorney is involved in the prosecution of a defendant, who is associated or involved in an internal affairs investigation, the following protocols will take place:

- The Commonwealth's Attorney or his/her designee will notify the Deputy Chief of the Administrative Division, or his/her designee, in the event the Commonwealth's Attorney has determined there is an obligation for a prosecutor to review internal investigation materials.
- Arrangements will be coordinated to schedule a formal meeting for the mandated document review at Police Headquarters.
- The assigned Commonwealth's Attorney will meet with the Internal Affairs representative to review the file.
- The initial file review will only involve a visual examination of the compiled documents relevant to the request.
- Should the assigned Commonwealth's Attorney, after consultation with the Commonwealth's Attorney and/or the Chief Deputy Commonwealth's Attorney identify any potential exculpatory evidence, the particular evidence will be retrieved from the Internal Affairs file.
- All relevant potential exculpatory evidence and details IE: any audio, video, photographs, or interview transcripts will then be shared with the Commonwealth's Attorney or his/her designee.
- For consistency, the Commonwealth's Attorney or his/her designee will be responsible for determining what file details are then formally released to the defendant's attorney to meet the *Brady* requirement.
- Any such examination and/or release of material will be documented in the IAPro system.

### **Brady/Giglio Material**

In 1972, in *Giglio v. United States*, the Supreme Court of the United States ruled that exculpatory evidence also includes information that could be used to impeach the credibility of prosecution witnesses, including officers. Prosecutors have an affirmative duty to seek out exculpatory evidence, and likewise, law enforcement has a duty to collect it and turn it over to the prosecutor. It is for that reason, any founded internal investigations, involving any of the below items, will be screened with the Office of the Commonwealth Attorney to determine if an employee will be put on a "Brady List." An employee who is on the "Brady List" presents significant problems to the prosecution of any case.

### **Non-Exhaustive List of Brady Material**

1. Any incident involving stealing
2. Any incident involving lying
3. Any incident involving cheating

## Administrative Investigation Field Guide

4. Any forgery or altering of documents whether official or unofficial
5. Filling out paperwork with information the officer knows to be false or untrue
6. Any incidents or statements that may show the officer to be biased
  - Racial bias
  - Gender bias
  - Age bias
  - Expressing they are out “to get” a particular individual

\*\*\* This includes social media postings
7. Any destruction of case-related documents, reports or evidence that established policy does not support the destruction of
8. Any excessive force or mistreatment of defendants or witnesses
9. Any threats made to defendants or witnesses other than work appropriate
10. The willful or purposeful failure to activate the body worn camera as prescribed in policy
11. Any act of fraud
  - A false claim to an insurance company
  - Bad check offenses
12. Soliciting another to do any of the acts outlined above
13. Anything that generally calls into the question the integrity of the officer.

### **Administrative Investigation Tools**

An employee may be compelled to submit to any ballistics, chemical, or other tests in accordance with General Order 1.05, Rule 39.

### **Photographs and Lineups (CALEA 52.2.6 A)**

Upon the order of the Chief or the Chief's designee, members shall submit to any ballistics, chemical or other tests, photographs, or lineups. All procedures carried out under this subsection shall be specifically directed and narrowly related to a particular investigation being conducted by the Department.

### **Alcohol and/or Drugs Tests**

An employee who is suspected of being impaired from consuming intoxicating beverages or is suspected of using illegal controlled substances or the improper use of controlled substances, in violation of HR Policy 6.15 (Substance Abuse Policy,) shall submit to the appropriate tests as required by that policy. All procedures set forth in HR Policy 6.15 shall be followed by Department employees. They shall also submit to testing when any of the following occurs while on duty, or while off duty and an employee has taken official police action:

- A. An employee discharges a firearm that is pointed towards a person, regardless of whether an injury is sustained.

### **Photograph Identification (CALEA 52.2.6 B, C)**

An employee may be required to stand in a lineup for viewing by citizens for the purpose of identifying an employee accused of misconduct. Department employee photographs may be maintained for the purpose of identification by citizens of an employee accused of misconduct.

Photographs of employees for identification will be required by the department and will be used as it narrowly relates to the employee's job. Photographs or video recordings of employees may be taken, whether knowingly or unknowingly of the employee, for the purpose of internal investigations when it relates to the employee's job and the employee is suspected of misconduct.

### **Financial Disclosure Statements (CALEA 52.2.6 D)**

As is related in General Order 1.05 Rule 40, upon the order of the Chief or the Chief's designee, members shall submit financial disclosure statements in accordance with departmental procedures in connection with a complaint in which this information is material to the investigation. These statements shall be maintained by the Chief and shall not be available to the public. An employee may only be compelled to provide financial disclosure statements when it is directly and narrowly related to allegations of misconduct involving any unlawful financial gain.

### **Polygraph Examination (CALEA 52.2.6 E)**

All polygraphs conducted in connection with internal or citizen complaint investigations shall be requested through the Internal Affairs Bureau and shall be approved in writing by the Police Chief. Examiners who conduct internal polygraph examinations of department personnel will be responsible for ensuring that the appropriate directive letter (Form PD-155) has been signed and delivered to the examinee in accordance with the Code of Virginia.

Polygraph examinations should be limited to those cases in which the allegations are relatively serious and all other investigative leads have failed to produce a preponderance of evidence which will either prove or disprove the allegation. No investigator shall personally administer a polygraph examination to any employee involved in a case in which he is the assigned investigator.

Polygraph results will be included as additional evidence to be considered by case reviewers, but shall not be referred to in a notice of disciplinary action letter or mentioned during any proceeding before the City's Personnel Board. Nor shall a finding be made solely on the outcome of a polygraph examination.

### **Administrative & Criminal Department Searches**

This section will promulgate legal authority and guidelines for conducting administrative or criminal searches of department or personal property within the workplace.

No employee should have an expectation of privacy regarding information stored, sent, or received in or on a City computer, CAD system, City issued cellular or smartphones, office desk, drawer, cabinet, locker, file etc. The Department reserves the right to review, search and/or inspect these spaces, areas, and/or systems as necessary in the scope and course of an administrative or criminal investigation. The purpose for conducting a search or inspection within the workplace will dictate the appropriate action to be taken.

## **Administrative Searches/Inspections**

In order to provide for efficient department operations, supervisors and employees have wide latitude to enter any and all police department workplace areas for administrative, non-criminal reasons. It is reasonable for supervisors and/or other employees to enter workplace areas to speak with employees, retrieve paperwork, forms, investigative reports, etc.).

Supervisors may also enter employee workspaces to inspect for the purposes of ensuring employee health, welfare, and safety, completing equipment inventory report checking functionality, etc. whether related to an investigation or not. Items that are inadvertently discovered and determined to be evidence of criminal activity or contraband will be collected and processed in accordance with current department evidence handling procedures.

## **Criminal Searches**

Searches conducted within the workplace to uncover evidence to support criminal charges will adhere to the Fourth Amendment. Prior to conducting a search, the supervisor will notify a Detective Bureau supervisor to initiate a criminal investigation.

## **Investigating Potential VCIN Violations**

1. The involved employee's command identifies a possible VCIN violation or a criminal violation that would preclude the employee from having VCIN access.
  - a. Examples of common VCIN violations include, but are not limited to:
    - i. Unauthorized dissemination of information obtained through VCIN
    - ii. Utilizing VCIN information for personal and/or non-criminal justice purposes
    - iii. Improper handling of VCIN records
    - iv. Unauthorized access of VCIN terminal
  - b. Criminal violations include:
    - i. Any felony offense
    - ii. Any class 1 or class 2 misdemeanor (excluding DUI – 1<sup>st</sup> Offense)
    - iii. DUI – 2<sup>nd</sup> Offense
    - iv. Crimes involving moral turpitude (lying, cheating, stealing)
    - v. Crimes involving gross misconduct (crimes against a person and crimes involving drugs or controlled substances)
2. The involved employee's command notifies the VCIN TAC and/or Police Services Lieutenant via memo.
3. The Police Services Lieutenant will notify the Support Division Manager of the possible violation and immediately follow up with a memo that outlines the details of the possible violation. The memo will contain a recommendation from the VCIN TAC regarding whether they believe the situation requires a temporary suspension of the involved employee's VCIN access based on VCIN rules.

4. The Support Division Manager will respond to the Police Services Lieutenant with whether the possible violation requires the temporary suspension of the involved employee's VCIN access. The Support Division Manager will notify the Chief, Deputy Chief, and Internal Affairs.
5. If the Support Division Manager recommends the suspension of the involved employee's VCIN access, the Police Services Lieutenant will notify the VCIN TAC, who will notify VSP in writing (memo sent via email to the VSP captain). A CC will be sent to the Support Division Manager, Services Lieutenant, and VCIN supervisor.
6. The Police Services Lieutenant will notify the involved employee's command of the VCIN suspension.
7. Internal Affairs will open an internal investigation.
8. If the suspected violation involves criminal or malicious intent, a criminal investigation will be conducted by the Detective Bureau. VSP will not conduct the criminal investigation. The criminal investigation will be concluded before the internal investigation is conducted.
  - a. Examples of VCIN violations involving criminal or malicious intent include selling VCIN information, utilizing VCIN information for stalking purposes, and identity theft.
9. Internal Affairs will notify the Police Services Lieutenant of the outcome of the internal investigation. The Police Services Lieutenant will notify the VCIN TAC, who will notify the VSP (memo sent via email to the VSP captain). The memo will contain the following information:
  - a. Summary of the violation
  - b. Outcome of the investigation (sustained/not sustained)
  - c. What actions were taken by the department to remedy the situation (training, discipline, etc.)
  - d. If the involved employee is to remain employed with the department, the memo will also include a request to have the involved employee's VCIN access reinstated. The request should include a statement that the involved employee understands the VCIN rules and regulations.
  - e. If the involved employee is terminated or resigns, their VCIN status will remain disabled, and the memo will include a statement that the employee was terminated or resigned.

### **Investigative Documentation**

At the conclusion of the administrative investigative process, the assigned investigator will prepare an Administrative Investigation Report (PD-1E) for review by command authority. This document shall include the following, at a minimum:

- a) The name of the accused employee.
- b) The name of the assigned investigator.
- c) The names of all pertinent witnesses.

- d) A listing of the allegations to include the rule number and literal citation.
- e) A brief summary of witness testimony and review of documentation. This is not designed to be a detailed overview of the statement. For these details, transcripts or recordings of the interviews are provided. In instances where there are no transcribed interviews, the Administrative Investigation Report shall serve as an accurate representation of an interview.

While the IAB investigator must remain neutral and report the facts within the Administrative Report, they will use these facts to develop an unbiased recommendation on the case disposition (sustained, sustained-other, not sustained, unfounded, exonerated) for the Police Chief's consideration. The Police Chief will decide if the Captains Discipline Review Board (CDRB) will review the case for any discipline higher than a reprimand, suspension, administrative decrease, demotion, or dismissal.

After the investigation is completed, a case file shall be prepared containing all documents collected during the investigation. At a minimum, this file will include the PD-1A, PD-1B (PD-1C in Inquiries) and Administrative Investigation Report. The Administrative Investigation Report shall be signed/initialed and dated by the investigator and other reviewers. The allegations listed on the PD-1B will be classified in accordance with the department's rules and regulations as contained in General Order 1.05 (Department Rules).

### **Findings (CALEA 52.2.8)**

All citizen complaints and internal investigations shall have one of the following findings: A memorandum from the command, supporting the conclusion, shall be included in the case file.

- SUSTAINED: Sufficient evidence to prove allegation.
- NOT SUSTAINED: Insufficient evidence to prove or disprove allegation.
- EXONERATED: Incident occurred, but employee's actions were proper.
- UNFOUNDED: Allegation is proven to be false.
- SUSTAINED OTHER: Sufficient evidence to prove an added allegation not part of the initial complaint. A violation of a department rule discovered and proven during the investigation

### **Policy Review**

A Policy Review is not a finding. It is an action used to address a situation where an employee's actions are within or outside of policy, but the consequences of policy need to be addressed.

### **Required Documentation/Action When a Complaint is Sustained**

A finding that a complaint is sustained merely states there was sufficient evidence during the course of the investigation to indicate the alleged act and/or actions occurred, that current policies do not support these actions as appropriate, and the accused employee is responsible for committing the act and/or actions.

A directed EAP referral will be required in cases involving a positive drug or alcohol screen and in cases involving founded violence in the workplace, per HR Policy 5.02, Employee Assistance Program; Policy 6.15, Substance Abuse Policy; and Policy 6.17 Violence Prevention Policy.

In other situations, the command may suggest EAP to the employee or, when appropriate, make a formal supervisory referral to EAP as an additional resource for assisting the employee in addressing the underlying causes of the problem behavior.

If the corrective action is non-disciplinary (counseling), all instances of counseling or additional training used to modify an employee's behavior shall be documented in the employee's MakeNote, in accordance with General Order 2.10 (Performance Feedback.)

If the corrective action involves disciplinary action (reprimands and more severe action) it shall be recorded in accordance with General Order 2.07 (Discipline) and as set forth in this field guide. **All disciplinary actions should be coordinated with the Human Resources Coordinator.**

IA retains the ability to re-open cases in limited situations, such as based on new or additional evidence or when recommendations made by the IRP require further review. Inquiries may be "concluded" by the Deputy Chief of the Administration Division or the commanding officer of the named employee without the necessity of the officer being interviewed. However, the concluding authority shall notify employees who are named in an inquiry that an inquiry has been conducted.

Administrative investigations concluded with Policy Review as the disposition shall include a recommendation as to what review is needed, by whom, and provide a follow-up due date. The Internal Affairs Bureau will be responsible for ensuring that the follow-up is completed and noted in the file.

### **Counseling and Discipline Process**

Counseling may be used by the supervisor as follows:

1. To determine the extent of any personal or job problems that may be affecting performance and to offer assistance and guidance.
2. To discuss minor and infrequent rule violations and to discuss the substance and importance of the rules with the employee.

The supervisor shall document all instances of counseling or additional training used to modify an employee's behavior.

Any supervisor may relieve from duty any subordinate personnel within his/her command when such action is considered to be in the best interest of the individual, the department, or the public for such a period as is necessary to receive direction from a higher level of authority.

Whenever actions by subordinate personnel are sufficiently improper and contrary to the best interest of the department or public that they require immediate correction, any supervisor may cross lines of authority and issue orders to correct the situation. The supervisor shall report the incident to the employee's immediate supervisor as soon as possible thereafter and follow through with a memorandum to the employee's command. In incidents of a less serious nature that do not require immediate corrective action, the supervisor should document the details on a memorandum and forward it to the employee's command.

### **Procedure for Written Reprimand**

A reprimand is written documentation provided to the employee from the supervisor advising and cautioning the employee in reference to his or her unsatisfactory conduct. **Written Reprimands should be coordinated with the Human Resources Coordinator.**

All supervisory personnel have the authority to issue a written reprimand. As is the case with all disciplinary action, supervisors should review the actions of the employee and the appropriateness of the written reprimand with their supervisor prior to taking such action. The purpose of the review is to ensure consistency in the application of discipline throughout the agency.

The procedure for imposing disciplinary action in the form of a written reprimand is to issue the **Memorandum of Charges (MOC)** document and the **Notice of Disciplinary Action (NDA)** document to the employee. Both documents may be issued to the employee at the same time and may be combined into one document provided all of the required information is included. Combining the MOC with the NDA is appropriate when a written reprimand is the desired discipline regardless of the employee's response. (e.g. red-light violations during non-priority response) The Disciplinary Cover Sheet (PD-4) shall be included in the case file.

### **Memorandum of Charges**

This is the first written procedural step in the process for imposing disciplinary action. The memorandum of charges shall include, at a minimum, the following:

1. The name of the employee and the name of the supervisor placing the charge(s);
2. A description of the conduct that constitutes a violation of policy or unsatisfactory conduct, including the names of witnesses, if applicable;
3. Identification of the specific rule or policy that is alleged to be violated or an explanation of why the conduct constitutes unacceptable behavior.
4. A statement outlining what steps management has taken to assist the employee, if applicable;
5. A summary of any relevant previous disciplinary action, if applicable, which may influence the current situation.

### **Notice of Disciplinary Action**

The Notice of Disciplinary Action is the second written procedural step in the two-step process for imposing disciplinary action. The Notice of Disciplinary Action shall include, at a minimum, the following:

1. A statement specifically describing the action to be taken, and the reason for that action;
2. A brief description of the conduct that constitutes a violation of policy or unsatisfactory conduct.
3. A summary of employee's response to the charges, if any;
4. A statement that further disciplinary action may be taken for future problems with unsatisfactory performance or misconduct, and
5. A statement of the employee's rights under the City's Dispute Resolution Program (Grievance Procedure, Open Door, or mediation) and, if applicable, the Law Enforcement Officers' Procedural Guarantees.

After eighteen (18) months free from further disciplinary action, a written reprimand shall not be considered for purposes of future disciplinary action and may be purged from the official personnel file.

Employees may request that discipline be purged through written request, pending approval by both the Police Chief and the HR Director. Employees shall utilize police form PD-4PR, Request to Purge Recorded Discipline, to request such.

**Written Reprimand Tasks**

1. Serve Memorandum of Charges (Memo)
2. Serve Notice of Disciplinary Action (Memo)
3. Complete Disciplinary Action Coversheet (PD-4)

**Procedure for Suspension**

A suspension from duty is disciplinary action taken by a supervisor against an employee. A suspension is a temporary prohibition of an employee to perform his or her duties due to unsatisfactory conduct. An employee shall not receive pay during any period of suspension and shall not be permitted to use leave. ***All suspensions of department members shall be coordinated with the Human Resources Coordinator and Internal Affairs Bureau*** in order to schedule a hearing before the Captains Disciplinary Review Board (CDRB).

Suspensions may be imposed in any increment of two hours. Any sworn employee or Animal Control Officer who is suspended for any amount of time must surrender his/her badge, departmental identification, and service weapon to their immediate supervisor prior to commencing the suspension. During any period of suspension, the employee may not take any police action or engage in any police related part-time employment.

Supervisors have the following authority to impose suspensions upon approval by the chain of command as follows:

1. Sergeants or first line supervisors may impose reprimands and suspensions up to ten (10) work hours (or one full shift for employees on other than ten (10) hour workdays).
2. Lieutenants or equivalent civilian supervisors and above may impose reprimands and suspensions up to twenty (20) work hours.
3. Precinct/Bureau commanders may impose reprimands and suspensions up to forty (40) work hours.
4. Division Commanders or managers may impose reprimands and suspensions up to eighty (80) hours work hours. (City Policy 4.02 requires that the Department of Human Resources approve suspensions when more than forty hours is requested. This approval should be coordinated with the Human Resources Coordinator prior to administering the Memorandum of Charges to the employee.)
5. Suspensions of 14 consecutive calendar days or more will affect the employee's anniversary date, health insurance and leave accumulation. As such, suspensions of 14 days or more must be endorsed by the Police Chief and approved by the Director of Human Resources.

Exempt employees, under the Fair Labor Standards Act, may not be suspended for less than one workday. Prior to imposing a suspension on an exempt employee, the official imposing such suspension must consult with the Department of Human Resources and Internal Affairs Bureau in order to schedule a hearing before the Captains Disciplinary Review Board (CDRB).

The procedure for imposing disciplinary action in the form of a suspension is to issue the Memorandum of Charges document to the employee along with a Five-Day Letter (PD-4A) and to coordinate with Human Resources while authoring the MOC and Five-Day Letter. The employee then has five (5) days to respond either verbally or in writing to the allegations.

Before issuance of a suspension, there must be a Pre-Determination Hearing between the Captains Disciplinary Review Board and the employee. The employee must receive written notice (email or memo) confirming the appointment (listed date/time/location) for the Pre-Determination Hearing, twenty-four (24) hours in advance of the meeting date and time. The written notice must also specify that suspension is the recommended course of action. The purpose of this board is to allow the employee the opportunity to respond to or explain the charges and/or any mitigating facts or circumstances they feel are relevant. The Captains Disciplinary Review Board will make a recommendation to the Police Chief, who will then make the final decision on disciplinary action.

A Notice of Disciplinary Action is then issued by the supervisor. The Notice of Disciplinary Action must include a reference to the response by the employee to the Memorandum of Charges, and/or the Pre-Determination Meeting, or the opportunity to respond if no response was received. The Disciplinary Cover Sheet (PD-4) shall accompany these documents.

A Memorandum of Suspension to Support Division/Payroll (PD-4S) will be completed by the supervisor taking the disciplinary and forwarded to the Account Clerk Supervisor in order to ensure the proper handling of pay and benefit issues affected by the suspension.

After five (5) years, free from further disciplinary action, a suspension shall not be considered for purposes of further disciplinary action and may be purged from the official personnel file. Employees may request that discipline be purged through written request, pending approval by both the Police Chief and the HR Director. Employees shall utilize police form PD-4PR, Request to Purge Recorded Discipline, to request such.

### **Suspension Tasks**

1. Serve:
  - a. Memorandum of Charges (Memo)
  - b. Five Day Letter (PD-4A)
2. Allow five days for involved officer to respond verbally or in writing to the allegations
3. IAB shall coordinate with the Captains Disciplinary Review Board or designee, to schedule appointment for the Pre-Determination Hearing no sooner than 24 hours in advance (Via email or in writing, noting a suspension is the recommended course of action and stating the number of hours for the suspension)
4. Conduct Pre-Determination Meeting with the Captains Disciplinary Review Board or designee
5. Serve Notice of Disciplinary Action (Memo)
6. Complete Disciplinary Action Coversheet (PD-4)
7. Complete Memorandum of Suspension (PD-4S)
8. For further information refer to City Discipline Policy and Procedure 4.02

Note: When the proposed discipline is suspension, the command shall coordinate with the Human Resources Coordinator prior to the administration of the Memorandum of Charges to the employee.

### **Administrative Decrease**

An administrative decrease is disciplinary action taken by a supervisor against an employee. An administrative decrease is a wage/salary reduction within the pay range of an employee's class. An Administrative Decrease must be reviewed by the Captains Disciplinary Review Board to provide recommendations to the Police Chief. Administrative decreases must be endorsed by the Police Chief and approved by the Director of Human Resources. The procedure for imposing disciplinary action in the form of an administrative decrease is identical to a suspension. Additionally, an administrative decrease shall require a letter of justification submitted by the Police Chief to the Director of Human Resources and shall be subject to the approval of the City Manager.

#### **Administrative Decrease Tasks**

1. Serve:
  - a. Memorandum of Charges (Memo)
  - b. Five Day Letter (PD-4A)
2. Allow five days for involved officer to respond verbally or in writing to the allegations
3. IAB shall coordinate with the Captains Disciplinary Review Board, or designee, to schedule appointment for the Pre-Determination Hearing no sooner than 24 hours in advance (Via email or in writing, noting a suspension is the recommended course of action and stating the number of hours for the suspension)
4. Conduct Pre-Determination Hearing with the Captains Disciplinary Review Board or designee
5. Police Chief shall submit Administrative Decrease Justification Letter to Director of Human Resources.
6. Serve Notice of Disciplinary Action (Memo)
7. Complete Disciplinary Action Coversheet (PD-4)
8. For further information refer to City Discipline Policy and Procedure 4.02

### **Procedure for Demotion**

A demotion is disciplinary action taken by a supervisor against an employee. A demotion is the reduction of the employee's pay range in conjunction with a change in job duties and responsibilities as a result of his/her unsatisfactory conduct. A demotion must be endorsed by the Police Chief and approved by the Director of Human Resources. A Demotion must be reviewed by the Captains Disciplinary Review Board to provide recommendations to the Police Chief. A disciplinary demotion can only be undertaken if the employee involved can qualify for a lower ranked position. If not, other discipline may be considered. The procedure for imposing disciplinary action in the form of a demotion is identical to an administrative decrease.

### **Demotion Tasks**

1. Serve:
  - a. Memorandum of Charges (Memo)
  - b. Five Day Letter (PD-4A)
2. Allow five days for involved officer to respond verbally or in writing to the allegations
3. IAB shall coordinate with the Captains Disciplinary Review Board, or designee, to schedule appointment for the Pre-Determination Hearing no sooner than 24 hours in advance (via email or in writing, noting a demotion is the recommended course of action)
4. Conduct Pre-Determination Hearing with the Captains Disciplinary Review Board or designee
5. Police Chief shall submit Demotion Justification Letter to Director of Human Resources.
6. Serve Notice of Disciplinary Action (Memo)
7. Complete Disciplinary Action Coversheet (PD-4)
8. For further information refer to City Discipline Policy and Procedure 4.02

### **Procedure for Dismissal (CALEA 26.1.7 A, B, C)**

A dismissal is disciplinary action taken by a supervisor against an employee. A dismissal is the involuntary separation from employment initiated by the employing authority based on an employee's unsatisfactory conduct. A Dismissal must be reviewed by the Captains Disciplinary Review Board to provide recommendations to the Police Chief. A dismissal must be endorsed by the Police Chief and approved by the Director of Human Resources.

The procedure for imposing disciplinary action in the form of a dismissal is to issue the Memorandum of Charges document to the employee along with a Five Day Letter (PD-4A). After the response from the employee is received IAB will coordinate a review of the dismissal via the Captains Disciplinary Review Board to provide the Police Chief a recommendation. Prior to dismissal, the department official authorized to terminate the employee shall afford the employee an opportunity to an informal meeting at which time he/she shall be informed of the reason(s) for the proposed dismissal and shall have the opportunity to answer or rebut the allegations in front of the Captains Disciplinary Review Board. The department official shall document the meeting. If after such meeting the official concludes that the employee should be dismissed, or if the employee declines to attend such a meeting or to make a statement, a written summary of the meeting and the employee's response, or a statement that the employee was offered a meeting and declined to appear and make a statement, shall be included in the employee's letter of dismissal. Additionally, the letter of dismissal will include the reason for the dismissal, the effective date of the dismissal, and contact information to learn the status of fringe benefits and retirement. Final action to dismiss an employee will not be taken by the Department of Human Resources until such written documentation is received.

No individual shall be reemployed or reinstated who has been dismissed twice from the City of Virginia Beach within the previous five (5) consecutive calendar year period.

### **Dismissal Tasks**

1. Serve:
  - a. Memorandum of Charges (Memo)
  - b. Five Day Letter (PD-4A)
2. Allow five days for involved officer to respond verbally or in writing to the allegations
3. IAB shall coordinate with the Captains Disciplinary Review Board, or designee, to schedule appointment for the Pre-Determination Hearing no sooner than 24 hours in advance (Via email or in writing, noting dismissal is the recommended course of action.
4. Conduct Pre-Determination Hearing with the Captains Disciplinary Review Board or designee
5. Police Chief shall submit Dismissal Justification Letter to Director of Human Resources.
6. Serve Letter of Dismissal
7. Complete Disciplinary Action Coversheet (PD-4)
8. For further information refer to City Discipline Policy and Procedure 4.02

### **Review Boards**

In specific incidents, there will be a need to convene a board to provide recommendations to the Police Chief. The boards will oversee specific use of force complaints and/or incidents, firearms discharges, and investigations resulting in discipline greater than a written reprimand. The applicable board will convene within 30 days of the conclusion of the internal investigation but prior to case determination.

### **Use of Force Board**

A Use of Force Board will be convened to make recommendations to the Police Chief for any Use of Force that meets the following criteria:

- Any use of force that results in serious injury or death. Serious injury will be defined as any injury inflicted by an officer requiring a person to be admitted to a hospital for care.
- Any use of force specifically requested by the Police Chief

The Use of Force Board will not adjudicate Firearms Discharge cases; these will remain the purview of the Firearms Discharge Review Board.

The UOF Board will be comprised of Virginia Beach Police Department members and the Public Safety Attorney. Department Members will be appointed by the Police Chief or his designee. Members will receive training on UOF law and VBPD policy. This training will be reviewed and approved by the Captain of the Training Bureau and the City of Virginia Beach Attorney's Office.

Board Composition – randomly selected for each hearing date from the appointed pool of trained candidates.

Composition: 7 voting members

Chair –Commanding Officer of Internal Affairs Bureau – non-voting member

Lieutenant of The Training Bureau – voting member

## Administrative Investigation Field Guide

Lieutenant – Any – voting member – 3-year appointment

Lieutenant – Any – voting member – 3-year appointment

Sergeant – Any – voting member – 2-year appointment

Sergeant – Any – voting member – 2-year appointment

Master Police Officer or Officer – Any – voting member – 2-year appointment

Master Police Officer or Officer – Any – voting member – 2-year appointment

Lieutenant - Accreditation – non-voting member

Public Safety Attorney – non-voting member

Master Police Officer – Lead Use of Force Instructor – non-voting member

Sergeant –Internal Affairs –non-voting member

Due to the sensitive nature of the material being reviewed, members will be required to sign a confidentiality agreement.

The UOF Board will be provided all documentation relevant to the UOF, to include the UOF report, BWC video(s) and if applicable the administrative investigation prior to the meeting for review. The Board will make the following recommendations based on a simple majority for each case reviewed:

- Whether all uses of force during the incident were consistent with Department policy and training
- Whether the officer(s) involved employed proper tactics
- Whether the incident was avoidable
- Whether other force alternatives were available and/or reasonable
- Training considerations

The Captain of IAB or a designee shall complete a cover letter of the Board's concern of initial rule violations and if appropriate, a recommendation will be noted concerning UOF matters that relate to undisclosed UOF incident(s) that may not be part of the original complaint. If additional information is needed, IAB will conduct a follow up investigation based on those concerns of the UOF Board. Once the investigation is completed, the cases will be returned to the UOF Board for additional recommendation and conclusion. The recommendation of the UOF Board will be advisory only. The recommendation will be presented to the Police Chief and attached to the investigative file upon conclusion on of the board.

### **Firearms Discharge Review Board**

The Firearms Discharge Review Board is established for the purpose of reviewing, evaluating, and making recommendations to the Police Chief concerning all incidents of firearms discharges by employees of the Virginia Beach Department of Police. Employees covered by this policy shall include all sworn, ancillary, civilian and volunteer personnel of the Police Department. The Captain of the Internal Affairs Bureau or his/her designee shall preside over the Board.

The Firearms Discharge Review Board will not be required in the discharge of firearms during authorized and supervised training, except when such a discharge presents a dangerous situation that could or does result in an injury of another person, death, or significant property damage. In these circumstances, the Division Commander, after review of the internal investigation, will determine the need for the Firearms Discharge Board.

The Firearms Discharge Review Board will not be required if the firearm was used to humanely dispose of a severely or critically injured animal when no other method of humane disposal was immediately available or in cases of unintentional discharges where there were no injuries or significant damages.

The Firearms Discharge Review Board shall evaluate each aspect of an employee-involved shooting. Such evaluation shall include a thorough review of the Internal Affairs Bureau report and a hearing of direct testimony, if necessary, from employees and witnesses.

The Firearms Discharge Review Board shall develop findings and make recommendations in the following areas:

1. Whether all uses of force during the incident were consistent with Department policy and training.
2. Whether the incident was avoidable;
3. Whether lesser force alternatives were available and/or reasonable;
4. Whether the officer(s) involved employed proper tactics;
5. Training considerations;
6. Quality of supervision;
7. Disciplinary considerations; and
8. The post-shooting investigative process and quality

Members of the Board shall include:

1. Internal Affairs Bureau Captain or designee – Chair
2. Captain – Voting member
3. Captain – Voting member
4. Captain – Voting member
5. Captain – alternate
6. Internal Affairs Bureau Lieutenant
7. Public Safety Attorney
8. Use of Force – SME
9. LETA – Range Sergeant

The investigator from the Internal Affairs Bureau shall present the case to the Board. The employee who discharged his/her weapon will be invited to attend and to present any additional statement to the Board but will not be compelled to attend or to make a statement.

The employee's immediate supervisor may accompany the employee but may not speak without permission of the chair.

Recommendations of the FDRB shall be forwarded to the Police Chief for review and will be advisory only.

### **Captain's Discipline Review Board**

Upon the conclusion of an Internal Affairs investigation the Police Chief will determine if the Captain's Discipline Review Board (CDRB) will convene to review the investigation to make a recommendation to the Police Chief on the appropriate level of discipline. The CDRB will occur prior to the employee receiving notice of pending disciplinary action.

The Internal Affairs Bureau Captain or designee will preside over the CDRB, with a member of IAB presenting the case to the CDRB for review. The CDRB will be made up of four captains, three will be voting members, with the fourth captain as an alternate. If the case involves a member of a board member's command, that captain will not hold a voting position. Prior to meeting, the board members will be provided the necessary documents to appropriately review the case and render an informed opinion.

The recommendation of the CDRB will be advisory only. The recommendation(s) will be present to the Police Chief and attached to the investigative file upon conclusion of the board.

### **Appeals and Grievances**

The Virginia Beach Police Department is committed to providing a quality work life for all employees and resolving issues at the lowest level possible within the organization. The policies and programs that follow are alternatives for employees for resolving concerns relating to the workplace and/or disputing disciplinary action taken by supervisors.

### **Open Door Policy**

The City of Virginia Beach [Open Door Policy, No. 4.05](#), is available to all employees of the Virginia Beach Police Department. The Open Door Policy encourages two-way verbal communication between employees and their supervisors. The Open Door Policy may also be utilized as a means to discuss and/or dispute disciplinary actions taken by supervisors, however an employee may not use the Open Door Policy and the Grievance Procedure on the same issue. Procedural details on the use of the Open Door Policy may be found on the HR Policies link Page on Beachnet.

### **City of Virginia Beach Grievance Policy and Procedure (CALEA 22.4.1 A, B, C, D, E, F, 26.1.6)**

The City of Virginia Beach [Grievance Policy and Procedure, No. 4.04](#), is available to all eligible employees of the Virginia Beach Police Department. The objective of the City of Virginia Beach Grievance Procedure is to obtain a complete understanding of employee concerns and to have them settled as soon as possible at the lowest possible supervisory level commensurate with a fair and equitable settlement. Details on the types of issues that may be addressed by the grievance procedure, eligibility requirements, and the procedural details of the policy may be found on the [HR Policies link](#) on Beachnet.

### **Law Enforcement Officers Procedural Guarantees (CALEA 22.4.1 A, 22.4.2, 22.4.3)**

The Law Enforcement Officers Procedural Guarantees are provided for by the Code of Virginia. All Department of Criminal Justice Services (DCJS) certified officers, with the exception of the Police Chief, may select an internal hearing utilizing the Law Enforcement Officers Procedural Guarantees as an alternative to the City of Virginia Beach Grievance Policy and Procedure. The internal hearing utilizing the Law Enforcement Officers Procedural Guarantees is available when a DCJS certified officer is dismissed, demoted, suspended, or transferred for punitive reasons.

Procedures for requesting and conducting an internal hearing utilizing the Law Enforcement Officers

Procedural Guarantees are located in Appendix I attached to this document. The Director of Human Resources for the City of Virginia Beach is responsible for the coordination of the grievance procedures existing or utilized under city policy.

The Director of Human Resources, or his/her designee, maintains and controls access and dissemination of all records regarding the use of the grievances filed by Department personnel. The Commanding Officer of the Internal Affairs Bureau shall coordinate the requests for a hearing pursuant to the Law Enforcement Officers Procedural Guarantees. Records generated from Law Enforcement Officers Procedural Guarantees hearings shall be maintained, and access and dissemination controlled by the Commanding Officer of the Internal Affairs Bureau, with copies of the grievance and findings maintained in the officer's official Human Resources personnel file.

Procedural Guarantees only cover suspension and more severe disciplinary action.

### **Annual Review of Disciplinary Action**

The Internal Affairs Bureau will conduct an annual review of all department disciplinary action imposed as a result of administrative investigations during the previous year to monitor consistency and to ensure that disciplinary action is imposed within departmental and city guidelines. The report will be provided to the Police Chief, who will disseminate as he/she feels appropriate.

### **Routing of Investigative Case Files (CALEA 52.1.2, 52.2.3, 52.2.4 A, C)**

In all administrative investigations, an investigator will enter all necessary information into the appropriate records management system. The records management system automatically generates due dates for tasks and assignments.

If the case is assigned to a supervisor in a command other than the Internal Affairs Bureau for investigation, then the complaint information and all associated documents are compiled in the appropriate folder by an investigator and sent to the precinct/bureau for follow up. When this is a citizen complaint, a form letter to the citizen is generated by the investigator and provided to the Administrative Assistant who acquires the signature of the Administrative Division commanding officer, documents the letter being sent and places it in the appropriate outgoing mail.

If the case is one that is investigated by the Internal Affairs Bureau, the investigator will provide the completed file to their supervisor for review and approval. Ultimately, the file will be provided to the commanding officer of the Administrative Division for approval prior to being distributed outside of the Internal Affairs Bureau.

Upon approval, the file is provided to the Administrative Assistant who logs the file and distributes it to the commanding officer of the accused employee for adjudication. In order to ensure timely delivery of the file, the administrative assistant and commanding officer of the accused employee's command are notified by e-mail that the file is ready for pick up. The case file is packaged in an envelope or blue security bag addressed to the command and is stamped "confidential" with the report number and date at the bottom of the right-hand corner. At the time the file is picked up by a command representative, the file is signed out in the Administrative Assistant's office and the recipient is required to sign acknowledging receipt.

When the command/bureau is finished with the adjudication process, the case is routed back to the Internal Affairs Bureau Lieutenant who will ensure all necessary documents and signatures are reflected in the file. The file is then routed to the appropriate Deputy Chief.

The Deputy Chief reviews and provides final approval on most Internal Investigations. The Internals with written reprimands or less are not routed to the Chief unless the Deputy Chief feels the Chief should review the case. The Deputy Chief also finalizes Inquiries, except animal euthanasia cases, which are finalized by the commander of the Internal Affairs Bureau.

Once the Deputy Chief has reviewed and signed the case, it is returned to the Internal Affairs Lieutenant once again to be checked for signatures and to determine if the case is to be routed to the Chief for review and signature. All Citizen Complaints, Internal Investigations dealing with employee against employee allegations, and all suspensions are to be routed to the Chief as a matter of policy.

Once the Deputy Chief or Chief has provided final approval of the file, the case is sent back to the Administrative Divisions' Administrative Assistant for finalization. This finalization includes:

- The preparation of all letters and/or memos where signatures are required.
- For all Citizen Complaints, a letter detailing the disposition of the case is prepared for the commanding officer of the Administrative Division signature and is sent by USPS mail to the complainant. This letter denotes the type of disposition of the case only and does not in any way indicate what if any disciplinary action was taken in the matter.
- For all Internal cases where allegations were made by one employee against another, memorandums detailing the disposition of the case are prepared for the commanding officer of the Administrative Division and are then sent via confidential inside mail to the affected employee.

The commanding officer of the Administrative Division may generate letters and/or memos if the complaint came through the city manager's office and they request a reply.

Termination letters will normally be generated by the Chief's office, but there are times when the Internal Affairs Bureau may be asked to prepare one for the Chief's signature.

Documentation of all letters/memos are placed in the case files and kept on file in the Internal Affairs Bureau. Whenever possible, documents will be linked directly to the appropriate records management system.

The Internal Affairs Bureau Lieutenant is tasked with completing all updates to the appropriate records management system with the appropriate case information, to include the findings, the action taken if any, and the completion date.

Completed cases are then provided to the Lieutenant of the Internal Affairs Bureau who will compile a listing of all disposed cases for inclusion in the Internal Affairs Monthly Case Disposition report. After the monthly report is generated, the cases are filed in a secure location under the sole control of the Internal Affairs Bureau.

**Approval Procedure (CALEA 26.1.8)**

Once the Memorandum of Charges and the Notice of Disciplinary Action have been served on the employee and signed, the IA file shall be forwarded to the Precinct or Bureau Commander (Discipline that may result in a suspension or higher shall be coordinated with Human Resources and Legal).



After the Precinct/Bureau Commander's review, the file shall be forwarded to the Office of the Internal Affairs. Internal Affairs will log the case and then forward it to the office of the appropriate Division Commander.



The Division Commander will review all Notices of Disciplinary Action that occur within that division for form and content and to ensure reasonable consistency within commands. The Division Commander will also assess the amount of time taken by the command to complete the corrective disciplinary process.



After the Division Commander's review, the file will be returned to the Internal Affairs Bureau.



When appropriate, Internal Affairs will forward the file to the Police Chief for review. After the Police Chief has reviewed the file, he will return it to Internal Affairs for finalization.



Internal Affairs will verify the final determination of disciplinary action and provide copies to the Department of Human Resources, the employee's command for inclusion into their respective personnel files, and inclusion in InSite.



In the event the Precinct/Bureau, Division Commander or the Police Chief elects to overturn or to amend the imposition of disciplinary action, a written explanation will be provided to the supervisor who initiated the disciplinary action and to the employee who is the subject of that action.

**Documents, Policies and Directives Cited in this Text**

Policy Title	Location
Administrative/Criminal Department Searches	Virginia Beach Police General Order 6.01
Department Rules	Virginia Beach Police General Order 1.05
Discipline	Virginia Beach Police General Order 2.07
Employee Grievance Policy and Procedure	Virginia Beach Human Resource Policy 4.04
Grievance Procedures	Virginia Beach Police General Order 2.09
Open Door Policy	Virginia Beach Human Resource Policy 4.05
Peer Support	Virginia Beach General Order 2.15
Performance Feedback	Virginia Beach Police General Order 2.10
Polygraph Unit	Virginia Beach Police General Order 8.09
Internal Affairs Bureau	Virginia Beach Police General Order 1.07
Restrictive Duty Status Guidelines	Virginia Beach Police Form PD-11
Substance Abuse Policy	Virginia Beach Human Resource Policy 6.15
Use of Force	Virginia Beach Police General Order 5.01
Virginia State Code, Sections 9.1-500 to 9.1-507, and 42.1-76	
Weapons Policy	Virginia Beach Police General Order 5.02

**Appendix A: Sample Memorandum of Charges**



# City of Virginia Beach

POLICE DEPARTMENT  
SECOND PRECINCT  
(757) 385-  
FAX (757) 385-

**VBgov.com**

820 VIRGINIA BEACH BLVD.  
VIRGINIA BEACH, VA 23451

## INTER-OFFICE MEMORANDUM

**DATE:** November 15, 2014  
**TO:** Officer A. B. Charles  
**FROM:** Sergeant X. Y. Zebra  
**SUBJECT:** Memorandum of Charges – Excessive Force

---

On September 30, 2014, you were involved in an arrest situation in which it is alleged that you used Capstun on a handcuffed prisoner to stop him from being verbally abusive, in violation of General Order 1.05, Department Rules, Rule 46, Use of Physical Force.

This allegation was made by Mr. John Q. Public and was investigated by the Internal Affairs Bureau, case number 2014-252 CC. In your interview with Internal Affairs, you acknowledged that the prisoner was under control and posed no threat to you or other officers.

Attached you will find a five day letter. The determination of disciplinary action will take place upon receipt of your response to this memo, or after the five days has elapsed.

Your signature below will acknowledge receipt of this memorandum.

XYZ

**Employee's signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Attachments: Five-Day Letter



Administrative Investigation Field Guide

(20) consecutive calendar days of receipt of this memorandum. If you have any questions, see me.

Your signature below acknowledges receipt of this memorandum.

Employee's Signature \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor's Signature \_\_\_\_\_ Date: \_\_\_\_\_

cc: Personnel File

**Appendix C: Internal/Citizen Complaint Check List**

**VIRGINIA BEACH POLICE DEPARTMENT  
(INTERNAL / CITIZEN COMPLAINT) INVESTIGATORS CHECK LIST**

---

**Incident Type:**

**Case Number:**

- Internal / Citizen Complaints require the PD1B to be signed by all involved parties
  - Internal / Citizen Complaints require the PD1B Disposition & Action Taken - to be completed
  - Investigative Summary signed by Investigator and other Reviewers listed on the report
  - Transcript(s) initialed by Investigator next to Investigator's name top of the Transcript
  - Administrative Notice completed at the top portion by the Investigator
  - Administrative Notice signed and dated by the involved parties at the bottom of notice
  - Accuracy Statement signed and dated by Involved Employee(s)
  - Command Memo(s) - completed and signed
- 

**Disciplinary Action**

- MakeNote attached to file
- Written Reprimand requires - (PD4), (Memo of Charges and or Notice of Disciplinary Action)
- Suspension requires - (PD4), (Notice of Disciplinary Action), (Five Day Letter), (Memo of Charges), (Payroll Notice attached)

**Appendix D: Missed Court / Missed Training Check List**

**VIRGINIA BEACH POLICE DEPARTMENT  
(MISSED COURT / MISSED TRAINING) INVESTIGATORS CHECK LIST**

---

**Incident Type:**

**Case Number:**

- Missed Court / Missed Training require the PD1B to be signed by all involved parties
  - Missed Court / Missed Training require the PD1B Disposition & Action Taken - to be completed
  - Investigative Summary signed by Investigator and other Reviewers listed on the report
  - Transcript(s) initialed by Investigator next to Investigator's name top of the Transcript
  - Administrative Notice signed and dated by the involved parties at the bottom of notice
  - Accuracy Statement signed and dated by Involved Employee(s)
  - Command Memo(s) - completed and signed
- 

**Disciplinary Action**

- MakeNote attached to file
- Written Reprimand requires - (PD4), (Memo of Charges and or Notice of Disciplinary Action)
- Suspension requires - (PD4), (Notice of Disciplinary Action), (Five Day Letter), (Memo of Charges), (Payroll Notice attached)

**Appendix E: Inquiry Case Check List**

## VIRGINIA BEACH POLICE DEPARTMENT (INQUIRY CASES) INVESTIGATORS CHECK LIST

---

**Incident Type:**

**Case Number:**

- Inquiry cases require the PD1C to be concluded & signed by Command Authority
  - Investigative Summary signed by Investigator and other Reviewers listed on the report
  - Transcript(s) initialed by Investigator next to Investigator's name top of the Transcript
  - Administrative Notice completed at the top portion by the Investigator
  - Administrative Notice signed and dated by the involved parties at the bottom of notice
  - Accuracy Statement signed and dated by Involved Employee(s)
  - Command Memo(s) - completed and signed
- 

### **Disciplinary Action**

- MakeNote attached to file
- Written Reprimand requires - (PD4), (Memo of Charges and or Notice of Disciplinary Action)
- Suspension requires - (PD4), (Notice of Disciplinary Action), (Five Day Letter), (Memo of Charges), (Payroll Notice attached)

**Appendix F: Firearms Discharge Check List**

**VIRGINIA BEACH POLICE DEPARTMENT  
(FIREARMS DISCHARGE) INVESTIGATORS CHECK LIST**

---

**Incident Type:**

**Case Number:**

- Firearms Discharge cases require the PD-1Ba (Action Taken) section to be completed
  - Discharge cases require the PD1-Ba to be signed by all involved parties
  - Investigative Summary signed by Investigator and other Reviewers listed on the report
  - Transcript(s) initialed by Investigator next to Investigator's name top of the Transcript
  - Administrative Notice signed and dated by the involved parties at the bottom of notice
  - Accuracy Statement signed and dated by Involved Employee(s)
  - Command Memo(s) - completed and signed
- 

**Disciplinary Action**

- MakeNote attached to file
- Written Reprimand requires - (PD4), (Memo of Charges and or Notice of Disciplinary Action)
- Suspension requires - (PD4), (Notice of Disciplinary Action), (Five Day Letter), (Memo of Charges), (Payroll Notice attached)

**Appendix G: Police Vehicle Accident Check List**

**VIRGINIA BEACH POLICE DEPARTMENT  
(POLICE VEHICLE ACCIDENTS) INVESTIGATORS CHECK LIST**

---

**Incident Type:**

**Case Number:**

- Police Vehicle Accidents require the PD1B to be signed by all involved parties
  - Police Vehicle Accidents require the PD1B Disposition & Action Taken - to be completed
  - Police Vehicle Accidents require the PD1CVA to be Concluded by Command Authority
  - Investigative Summary signed by Investigator and other Reviewers listed on the report
  - Transcript(s) initialed by Investigator next to Investigator's name top of the Transcript
  - Administrative Notice completed at the top portion by the Investigator
  - Administrative Notice signed and dated by the involved parties at the bottom of notice
  - Accuracy Statement signed and dated by Involved Employee(s)
  - Command Memo(s) - completed and signed
- 

**Disciplinary Action**

- MakeNote attached to file
- Written Reprimand requires - (PD4), (Memo of Charges and or Notice of Disciplinary Action)
- Suspension requires - (PD4), (Notice of Disciplinary Action), (Five Day Letter), (Memo of Charges), (Payroll Notice attached)