



GENERAL ORDER		#2.05
PERSONNEL COMPLAINT POLICY		
<i>ISSUING AUTHORITY:</i> CHIEF ROBERT M. NOBLE		
<i>ISSUE DATE:</i> 08/11/87	<i>EFFECTIVE DATE:</i> 08/11/87	
<i>REVISIONS:</i> 10/02, 10/06, 06/08, 11/18, 12/20		
<i>PAGES:</i> 12 + 4 ATTACHMENTS		

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2.05.05 STATEMENT OF PURPOSE –

The purpose of this policy is to improve the quality of police services. This is accomplished in three ways. First, through the provision of meaningful and effective grievance procedures, citizen confidence in the integrity of police actions increases, and this engenders community support and confidence in the Police Department. Improving the relationship between the police and the citizens they serve facilitates police-citizen cooperation, an element vital to the Department's ability to achieve its goals. Second, disciplinary procedures permit police officials to monitor officer's compliance with departmental procedures. Adherence to departmental procedures assists officers in meeting departmental objectives and a monitoring system permits managers to identify problem areas in which increased training or direction is necessary. Finally, the third purpose is to clarify rights and ensure due process protection to citizens and officers alike. Heightening officer awareness of the rights afforded them when charged with misconduct will increase the appreciation of the comparable rights afforded citizens accused of a crime.

In light of these purposes, the objective of this policy is to provide citizens with a fair and effective avenue for redress of their legitimate grievances against law enforcement officers and, by the same token, to protect officers from false charges of misconduct or wrong-doing and provide accused officers with due process safeguards. The Yorktown Police Department wants to maintain the integrity of the Department as well as its employees. In so doing, the Department shall not hesitate to impose disciplinary actions where justified, to remove from



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employment those officers who prove to be unfit for law enforcement work, and to dismiss unjustified allegations.

It is the policy of the Yorktown Police Department to accept and investigate all complaints of officer misconduct or wrongdoing from any citizen or Department employee. Following a thorough and impartial examination of the available factual information, a determination will be made as to the merits of the complaint and whether misconduct occurred. If misconduct or wrongdoing occurred officers involved shall be disciplined according to the degree of misconduct.

The imposition of corrective actions and necessary penalties are among the methods available to management to achieve Department goals and compliance with Department policies and procedures. Use of this authority is intended to eliminate the particular behavior and to censure the individuals that account for the misconduct. Furthermore, the discipline process shall be used to identify and correct unclear or inappropriate agency procedures, as well as organizational conditions that may contribute to the misconduct, such as poor recruitment and selection procedures or inadequate training and supervision of officers.

This Department is committed to providing law enforcement services that are fair, effective, and impartially applied. In so doing, officers are held to the highest standards of official conduct and are expected to respect the rights of all citizens. An officer's voluntary adherence to these standards, motivated by a moral obligation to perform his/her job to the best of their ability, is eminently desirable and an ultimate objective of this Department.

If an officer does not adhere to the standards of official conduct, either through deliberate action or negligence, disciplinary action shall be applied in a prompt and certain manner.

2.05.10 PREVENTION OF MISCONDUCT –

It is the policy of this agency to emphasize the prevention of misconduct as the primary means of reducing and controlling it. The Department shall make every effort to prevent and eliminate any organizational conditions which may foster, permit, or encourage improper behavior by its employees.

2.05.15 RECRUITMENT AND SELECTION –

Finding and appointing the highest quality of individuals to serve as law enforcement officers is a priority for this agency.

During the selection process, individual interviews of the candidate will be conducted by all of the Division Commanders, as well as by the Chief and Operations Commander. In addition, any candidates who are being considered for appointment will be subject to a thorough background investigation in an attempt to identify those who would be unsuited for police work.



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2.05.20 TRAINING –

Recruit training and in-service training is a high priority for the Department which helps in maintaining a high level of proficiency and professionalism in law enforcement and public safety.

Recruits shall receive the most current training in the Police Academy. After graduation from the Academy this is followed by an intense twelve week training period in the Field Training Program. This training is one-on-one with a trained Field Training Officer (FTO). Newly hired officers with this Department, who have previously graduated from the Academy and have prior police experience with another jurisdiction, will be assigned to the FTO program for an eight week period.

In-Service training is designed to reinforce those skills learned in the Police Academy and to keep training up-to-date and current. This training includes but is not limited to; legal issues, first-aid and CPR, use of force, firearms, defensive tactics, tactical issues, and other training issues as required.

This training is designed and implemented with the intent to maintain the highest standards for public safety and professionalism in law enforcement. This commitment to training exemplifies the Department's commitment to the quality of service the community receives.

2.05.25 WRITTEN DIRECTIVES MANUAL –

Each officer shall be given an official manual which contains the rules, regulations and policies of the Yorktown Police Department. The directives shall emphasize the officer's responsibility and accountability to the citizens of the community and their obligation to protect the civil rights of all citizens. Reality necessitates noting that many police situations are chaotic, uncertain and rapidly evolving; maintaining steadfast adherence to written procedures during exigent circumstances may not be practical. (Rev 11/18)

2.05.30 SUPERVISORY RESPONSIBILITY –

Proper training of Department supervisors is critical to the discipline and performance of patrol officers. Emphasis shall be placed on anticipating problems among officers before they become manifest in improper behavior or debilitating conditions, identifying potentially troublesome officers, identifying training needs of his or her officers and providing support in a consistent and fair manner.

2.05.35 POLICY –

It shall be the policy of the Yorktown Police Department to require all of its employees to represent the highest standards possible in both their personal and professional life. The system that has been established to investigate officer misconduct and to impose disciplinary actions is intended to be fair, thorough and objective. Members of the Department shall encourage citizens to bring forward legitimate grievances regarding inadequate service or misconduct by members of the Department, and those complaints shall be received courteously and processed without delay.



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Members of the Department shall assist in the expeditious and impartial processing of citizen complaints in accordance with these procedures.

2.05.40 CATEGORIES OF INVESTIGATIONS

- A. Category I: All complaints concerning Department members which allege:
 - 1. Unnecessary or excessive use of force.
 - 2. False arrest.
 - 3. Violation of a specific criminal statute.
 - 4. Corruption.
 - 5. Gratuities.
 - 6. Serious Misconduct.
 - 7. Insubordination.
 - 8. Other complaints or allegations as directed by the Chief of Police.
- B. Category II: All citizen complaints relating to inadequate service, discourtesy, improper procedure, and any other allegations involving members of the Department which are not included in the preceding category.
- C. Complaints Defined: While it is generally obvious when a complainant alleges misconduct on the part of any employee, complaints concerning lack of service or improper procedures are sometimes more difficult to categorize.

In many instances, a citizen may be merely requesting information or clarification of a policy or procedure. In such case, the citizen should be given a thorough explanation of the procedure or legal issues involved in the situation that initiated the inquiry. In some cases concerning alleged violations of Category II offenses, the supervisor receiving a complaint may be able to resolve a complaint without filing a formal Personnel Complaint Report (YPD-52). Because of the fine line that occasionally exists between inquiries and minor complaints in Category II that can be resolved by a supervisor, if there is any question, it should be considered a formal complaint and forwarded for further action.

2.05.45 PROCEDURE FOR ACCEPTING PERSONNEL COMPLAINTS-

Any personnel complaint, regardless of category, may be lodged at Headquarters Main Desk or with any member of the Department. Whenever possible, the supervisor in charge of the tour should receive the complaint. Complaints, regardless of their nature, can be lodged in person, by mail or by telephone at any time. Normally, when a complaint is received by mail or by telephone, the complainant should be required to sign a formal Personnel Complaint Form (YPD-52) within five (5) days.

Anonymous complaints and/or complaints where the complainant refuses to sign a formal Personnel Complaint Form (YPD-52) will be handled as follows:

Third Party Complaints-Whenever a complaint is filed by a third party: A SINCERE ATTEMPT WILL BE MADE TO INTERVIEW AND OBTAIN A STATEMENT FROM THE AGGRIEVED PARTY. (Rev 11/18)



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Category II Type Complaints: If after the five (5) day period the person refuses to sign a formal complaint, he or she will be notified that NO FURTHER ACTION WILL BE TAKEN ON THIS COMPLAINT until the complaint is signed. If after ONE (1) month the person making the complaint or the anonymous person making the complaint does not sign the Personnel Complaint Form (YPD-52), the complaint shall be labeled, "Closed by Lack of Complainant" and filed.

Category I Type Complaints: In this category of complaints, the Division Commander who receives the complaint will immediately meet with the Operations Commander and/or Chief of Police for evaluation of the nature and source of the allegation. The depth of the investigation will depend upon factual information received and a determination will be made if the complaint warrants an investigation even if the complainant does not wish to sign a Personnel Complaint Form (YPD-52).

A. Where a non-ranking member of the Department receives a complaint against a member of the Department, he/she shall immediately request the presence of a supervisor who shall interview the complainant and document the complaint on a YPD 52. (Rev 11/18)

B. The supervisor receiving the personnel complaint will take whatever immediate action is necessary and then file the YPD 52 report with his/her Division Commander who will submit the complaint to the Operations Commander. (Rev 11/18)

C. The Personnel Complaint Form (YPD-52) is to be used to document complaints regarding personnel, services, or Department policy and procedures. The form is to be completed on ALL CATEGORY I cases and on Category II cases sufficiently serious to warrant investigation. (Rev 11/18)

D. It is essential that complete and accurate information regarding the complaint and the allegations be obtained. The information should include:

1. Full name, date of birth, address and telephone number of the complainant and any additional information indicating where the complainant may be contacted. Complete military addresses should be obtained from military personnel.
2. The specifics of the allegation should be obtained, including the date, time and location.
3. The name, address, and telephone number of all witnesses should be recorded.
4. Personnel involved should be identified by name and badge number if possible.
5. If additional space is required, additional YPD 52 reports should be used; numbered sequentially. (Rev 11/18)
6. A complainant seeking to register a complaint which does not affect this Department should be referred to the Department or Agency concerned. A memorandum on the referral should be completed and forwarded to the Division Commander of the person making the referral who will forward it on to the Operations Commander.
7. The person receiving a personnel complaint will note on a memorandum any conditions relating to the credibility of the complainant, (*e.g. mental condition, apparent influence of drugs or intoxicants, evidence of visible marks of injuries, etc.*). (Rev 11/18)



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E. The Department member taking the complaint shall be responsible for routing the Personnel Complaint Report as follows:

1. Original Personnel Complaint Report and any memorandums will be forwarded to the Division Commander of the Officer named in the complaint. (Rev 11/18)
2. The Division Commander should forward the original Personnel Complaint Report and any supplements to the, Operations Commander.
3. The Operations Commander should log the complaint in the Central Complaint Index (which is maintained in the Operations Office) and assign the complaint for investigation. The Operations Commander should make one (1) copy of the complaint and all supporting documentation. The original will be given to the supervisor assigned to conduct the investigation. The copy will be filed in the Personnel Complaint File in the Operations Commander office, after the Chief of Police has been advised of the complaint. Additionally, if the Personnel Complaint is of a criminal nature, the Bureau Chief of the Westchester County District Attorneys Office serving the Town of Yorktown (*presently in the Commerce Building 862-5140*) will be made aware of the investigation by the Operations Commander or the Chief of Police. Copies of the Complaint and supporting documentation, along with the results of the Department investigation will be provided to the District Attorneys Office upon their request. Additionally, the Operations Commander will insure that full cooperation is afforded to the District Attorneys Office in overseeing the investigation of the allegation(s) as circumstances may warrant. (Rev 11/18)

2.05.50 CENTRAL COMPLAINT INDEX-

- A. The office of the Operations Commander shall be responsible for maintaining a comprehensive central index of all citizen complaints received by the Department.
- B. The responsibility of the Operations Commander, in relation to the Central Complaint Index, shall include the following:
 1. Maintain a numerical file of all citizen complaints recorded on Civilian Complaint forms.
 2. Coordinate and review internal investigations relating to citizen complaints.
 3. Prepare statistical analyses of complaints to identify trends or patterns developing within the Department or with individual members that may require additional training or corrective action.

2.05.55 CONFIDENTIALITY –

The Operations Commander will have the responsibility of maintaining the confidentiality of personnel complaints and internal affairs investigation(s) and the maintenance of records. All personnel complaint records will be maintained in the Operations Commander's office and are to be considered confidential in nature. No copies of these records will be provided without a subpoena or order to produce, and then only after review by the Town Attorney. After a personnel complaint against a member has been investigated, the Operations Commander will allow the accused officer to review the complaint in the Operations Commander's office, but the record cannot leave the Operations Commander's office. As to other members of the Department, the personnel complaints will be available for review by



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Division Commanders. Other supervisors may review the records on a "need-to-know basis" as approved by the Operations Commander.

The disciplinary records will be kept in the Personnel Complaint File in the Operations Commander's office as long as the accused officer is an active member of this Department. Five (5) years after an accused officer leaves the Department, the disciplinary record should be transferred to the officer's inactive personnel folder. The transfer of this record should be noted in the Central Complaint Index.

2.05.60 PROCEDURES FOR INVESTIGATION OF COMPLAINTS-

A. The Operations Commander, shall have primary responsibility for assigning and supervising the investigation of all Category I cases.

1. In any situation or incident of a critical or emergency nature, the person receiving the complaint shall immediately notify the Operations Commander, who shall assume or assign the responsibility for the investigation.

B. Investigation of Category II cases will be assigned by the Operations Commander, to the appropriate Division Commander who will assume or assign the responsibility for the investigation.

When personnel of more than one Division are involved, the Operations Commander, will designate a particular Division Commander to be responsible for the investigation.

C. All complaints against personnel shall be investigated by officers of superior rank.

D. All investigations will be conducted promptly and shall be completed within fifteen (15) days of the date the complaint was received by the Department. If it is not possible to complete the investigation within fifteen (15) days, the Operations Commander, shall be notified of the reason for the delay, and the new projected completion date. Any extension beyond thirty (30) days of receipt must be approved by the Chief of Police.

E. Once an officer is identified as the subject of a complaint, and a personnel investigation has started, the supervisor assigned to the investigation and his Division Commander will follow the investigation through to a logical conclusion. This applies even if the officer or the supervisor is transferred to another division during the investigation.

F. All recognized investigative methods for determining the facts surrounding a complaint shall be utilized. Interviews shall be conducted with the complainant and all witnesses. Department members shall be interviewed and written reports obtained, when necessary.

2.05.65 NOTIFYING THE SUBJECT OF A PERSONNEL COMPLAINT-

The Operations Commander upon determining the name of the officer who is the SUBJECT of a Personnel Complaint will see that the officer is notified of the nature of the complaint and the name of the complainant. This notification will in most cases be verbal, however a form entitled **NOTICE OF PERSONNEL COMPLAINT (YPD-52A)** should also be used for this notification. Of course, if the nature of the Personnel Complaint requires an undercover internal affairs type investigation no notification will be made.



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2.05.70 NOTICE OF QUESTIONING-

Prior to the questioning of any officer who is the SUBJECT of a Personnel Complaint they will be served notice by using the form entitled **NOTICE OF QUESTIONING (YPD-52B)**. In accordance with Civil Service Law Section 75 (2), this notice informs the officer of the right to have a representative present at the time of questioning. A reasonable period of time (*usually 24 hours*) will be allowed for an officer to obtain representation by their certified or recognized employee organization.

If an officer being questioned is identified as a WITNESS he or she should be notified of such by using the **WITNESS OF PERSONNEL COMPLAINT FOR (YPD-52C)**. If circumstances allow, the WITNESS should be given time to bring a PBA/Union representative to the interview. However, since the officer is being questioned as a witness Civil Service Law Section 75 (2) does not apply.

2.05.75 INVESTIGATIVE GUIDELINES-

The questioning of an officer shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate otherwise.

The questioning shall take place in Yorktown or at a mutually agreed location.

The questioning of the officer shall not be overly long. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls and rest periods as are requested by the member.

The officer shall not be subjected to any offensive language, nor shall he/she be threatened with transfer, dismissal or other inappropriate disciplinary action. No promises of rewards shall be made as an inducement to answering questions. No member shall be required to answer any question that is not specifically, directly, and narrowly related to the performance of the member's duties as a Yorktown Police Officer, unless the nature of the investigation is such that it is necessary to question the officer concerning matters which are beyond the scope of the officer's official duties.

Either the officer being questioned or the investigating officer may request that the interview be tape-recorded. However, no tape recording should take place without the full knowledge of all parties.

2.05.80 INVESTIGATIVE PROCEDURES –

Two types of investigations may take place: ADMINISTRATIVE OR CRIMINAL. Different rules govern interviews of employees in each case.

Interview for ADMINISTRATIVE PURPOSES: If the Chief of Police or investigating supervisor wishes to compel an employee to answer questions directly related to his/her official duties and the Chief of Police or investigating supervisor is willing to forego the use of such



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answers in a criminal prosecution, the Chief of Police or the investigating supervisor shall advise the employee of the following:

A. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.

B. Any questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.

C. No answers given nor any information obtained by reason of such statements may be admissible against the employee at any criminal proceeding.

The employee shall read or have read to himself/herself, the following:

I WISH TO ADVISE YOU THAT YOU ARE BEING QUESTIONED AS PART OF AN OFFICIAL INVESTIGATION OF THE POLICE DEPARTMENT. YOU WILL BE ASKED QUESTIONS SPECIFICALLY DIRECTED AND NARROWLY RELATED TO THE PERFORMANCE OF YOUR OFFICIAL DUTIES OR FITNESS FOR OFFICE. YOU ARE GUARANTEED BY THE LAWS AND THE CONSTITUTION OF THE STATE OF NEW YORK AND THE CONSTITUTION OF THE UNITED STATES, INCLUDING THE RIGHT NOT TO BE COMPELLED TO INCRIMINATE YOURSELF. I FURTHER WISH TO ADVISE YOU THAT IF YOU REFUSE TO TESTIFY OR ANSWER QUESTIONS RELATING TO THE PERFORMANCE OF YOUR OFFICIAL DUTIES OR FITNESS FOR DUTY, YOU WILL BE SUBJECT TO DEPARTMENTAL CHARGES WHICH COULD RESULT IN YOUR DISMISSAL FROM THE POLICE DEPARTMENT. IF YOU DO ANSWER, NEITHER YOUR STATEMENTS NOR ANY INFORMATION OR EVIDENCE WHICH IS GAINED BY REASON OF SUCH STATEMENTS CAN BE USED AGAINST YOU IN ANY SUBSEQUENT CRIMINAL PROCEEDINGS. HOWEVER, THESE STATEMENTS MAY BE USED AGAINST YOU IN RELATION TO SUBSEQUENT DEPARTMENTAL CHARGES.

D. In an interview for administrative purposes, no Miranda rights are required. Further, the foregoing rules are inconsistent with Miranda in that employee's statements cannot be used as evidence in a criminal prosecution.

2.05.85 INTERVIEWS FOR CRIMINAL INVESTIGATIVE PURPOSES-

If the Chief of Police or investigating supervisor believes criminal prosecution is a possibility and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, he or the investigating supervisor shall:

A. Give the employee Miranda Rights.

B. Advise the employee that if he/she asserts his/her right not to answer questions, no adverse administrative action will be taken based upon the refusal.

C. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.

NOTE: Miranda includes the provision that a lawyer may be present at an interview. Although technically, the employee has no right to counsel until the employee has been



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criminally charged or his freedom of action has been deprived, the Department wishes the employee to have the option. The Department wishes no possibility to arise in which its actions may be construed coercive.

2.05.90 INVESTIGATIVE RESOURCES –

In addition to interviews of the employee and witnesses, the Chief of Police or investigating supervisor may require other activities and support of a complaint including:

2.05.95 MEDICAL AND LABORATORY EXAMINATION –

The Chief of Police or investigating supervisor may, based on his observation, require a Department employee to submit to a test for drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.

A. If the employee is believed to be under the influence of alcohol, a certified Datamaster/DMT operator will administer the test. The Chief of Police or investigating supervisor will witness the test and will be required to sign as a witness. (Rev 11/18)

B. If the employee has a reading of .05 or higher, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the Chief of Police or his designee in authority. See contractual limitations in this area.

C. If the employee is believed to be under the influence of illegal drugs, he/she may be compelled to submit to a blood and/or urine test. The test shall be administered using the guidelines and procedures adopted by the Town Board of the Town of Yorktown.

D. If the test shows positive results or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the Chief of police or his designee. (Rev 11/18)

E. If an employee refuses to submit to a test for alcohol then the Chief of Police or his designee will immediately relieve the employee from his/her duties for a period of time not to exceed the next eight (8) consecutive hours (as provided in the Town/PBA contract).

F. If an employee refuses to submit to a test for drugs, then the Chief of Police or his designee will immediately relieve the employee from duty for failure to cooperate in an administrative investigation.

2.05.100 PHOTOGRAPHS –

Photographs of employees may be maintained for the purpose of identification by complainants of an employee accused of misconduct.

2.05.105 ADJUDICATION OF COMPLAINTS-

A. The results of the investigation shall be recorded on Departmental Memorandum. (Rev 11/18)



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B. The Investigating Superior Officer shall include the disposition of the investigation on the memorandum. (Rev 11/18) Dispositions are classified as follows:

- **SUBSTANTIATED** - The accused employee committed all or part of the alleged acts of misconduct.
- **UNSUBSTANTIATED** - The investigation produced insufficient information to clearly prove or disprove the allegations.
- **EXONERATED** - The alleged act occurred but was justified, legal and proper.
- **UNFOUNDED** - The alleged act did not occur.
- **MISCONDUCT NOTED** - Acts of misconduct were discovered during the investigation that were not alleged in the original complaint.

C. The completed investigation, including original copies of all investigative reports, will be forwarded to the Operations Commander. After final review, the Operations Commander will make these reports available to the Westchester County District Attorney's Office only if the complaint is of a criminal nature. (Rev 11/18)

D. The completed report of the investigation conducted shall be forwarded to the Chief of Police. At the discretion of the Chief of Police, findings of misconduct may be given to the appropriate Division Commander for review. The Division Commander will review the findings and the officer's personnel files-if requested he/she will submit a written recommendation concerning disciplinary action to the Chief of Police. Disciplinary action for substantiated instances of misconduct will be at the discretion of the Chief of Police. (Rev 11/18)

E. In all complaints the complainant shall be notified of the results/disposition of the investigation, either in person or by telephone, by the supervisor conducting the investigation. If the investigation resulted in disciplinary action against the Department member, the complainant shall be advised only that "appropriate" disciplinary action has been taken. The specific disciplinary action shall not be released.

F. In all complaints investigated, the officer(s) involved will be notified in writing of the results of the investigation and its completion. (Rev 11/18)

G. The Operations Commander will file the completed investigation and all original paperwork in the appropriate Personnel Complaint File. (Rev 11/18)

2.05.110 POLICE COMMISSIONERS' REVIEW –

If applicable, the Chief of Police shall make quarterly summary reports of any new and completed Personnel Complaints and Internal Affairs Investigations to the Police Commissioners (*Supervisor & Members of the Town Board*). The Police Commissioners who act as the hearing board, if formal charges are preferred against an officer, may not review or receive any facts of a complaint prior to its being closed or resolved unless a release is received from the officer accused. These summaries or any copies of actual Personnel Complaints and Internal Affairs Investigations shall be collected and destroyed after being reviewed by the Police Commissioners. (Rev 12/20)



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This policy encourages the Police Commissioners to periodically review the nature, investigation and resolution of the Personnel Complaints being filed against officers.