

TITLE: Community Complaint Procedure – Police Officers

PROCEDURE NUMBER: A-22

EFFECTIVE DATE: 05/18/2021

PAGES: 9

RENAMED & REVISED DATES: 03/07/2024

APPROVED:

PURPOSE

The purpose of the Procedure for Independent Review and Investigation of Policing Complaints ("Review and Investigation Procedure") is to provide independent, objective, fair, and transparent review of formal complaints from the public regarding the conduct of Police Department sworn personnel.

DEFINITIONS

A "Formal Complaint" is defined as a written complaint submitted to the Los Gatos Town Clerk, Los Gatos Town Attorney, or the Los Gatos-Monte Sereno Police Department, using the Town of Los Gatos Police Department Community Complaint Form available online, in person, or via request by mail or email. Pursuant to California law, the complaint form must contain sufficient information to determine the identity of the complainant and must be signed by the complainant acknowledging they have read and understand the advisory on the form required by Cal. Pen. Code §148.6.

"Serious Misconduct" is defined as conduct that, if true, would likely lead to substantial discipline and/or criminal prosecution.

"Substantial Discipline" is defined as discipline imposed at a level above a Letter of Reprimand. Substantial disciplinary actions include suspension without pay, reduction in pay, demotion and dismissal.

SCOPE

On November 3, 2020, the Town Council voted to authorize the Town Manager to establish an Independent Police Auditor function with a panel of diverse rotating investigators. The 2023 amendment retitles the procedure and clarifies the steps to be followed. Summary reports will be provided to the Town Council and the public annually.

PROCEDURES

Los Gatos-Monte Sereno Police Department (LGMSPD) personnel are held to the highest standards of conduct both on and off duty. As a critical component in building and maintaining trust with the community, formal community complaints regarding any sworn member of the Police Department will be received by the Town Clerk or the LGMSPD, using the complaint form provided on the Town of Los Gatos website, and also made readily available at the Los Gatos-Monte Sereno Police Department Offices, or via request by mail or email. Formal community complaints received by LGMSPD will be forwarded to the Town Clerk. Formal community complaints regarding sworn members of the LGMSPD must be reviewed in a manner that is fair, impartial, independent, thorough, and timely. An effective review process is intended to ensure that formal community complaints about an officer are heard, evaluated, and addressed to ensure the personnel of LGMSPD are held to the highest standards, using a process that respects the rights afforded the officer(s), while protecting them from false or malicious accusations. If a review determines that an investigation is necessary, the Independent Review and Investigation Procedure for complaints utilizes consulting investigators to conduct the independent investigation and render findings based on the facts of the case.

The independent investigators shall provide the Town of Los Gatos with an independent, objective, fair, and transparent investigative review of formal community complaints regarding the conduct of sworn LGMSPD personnel. A general outline of the process involved for each complaint received is provided below. The independent investigation shall follow the legislative guidance of the Public Safety Officers Procedural Bill of Rights Act ("POBR") (codified in Government Code Sections 3300-3312), to assure the rights and protections are provided to police officers. Updates to this process may be completed as needed by the Town Manager, consistent with other Town procedures.

For those who opt not to submit formal complaints, informal community concerns regarding any LGMSPD employee(s), received by dispatch or other police department or town personnel, may be referred to police department supervisors for review and disposition. Supervisors are required to forward the details of the informal complaint and disposition to the Police Chief through the chain of command.

- a. Formal Community Complaints against sworn police personnel may be submitted to the Police Department by email to police@losgatosca.gov, by mail to Town Clerk, 110 East Main Street, Los Gatos, CA 95030 or in person at Town Hall. All formal complaints will be forwarded to the Town Attorney for review. The Los Gatos Monte Sereno Police Department Community Complaint Form and information regarding the process for submitting a formal community complaint against a sworn officer is available on the Town's website or at the Town Clerk's Office located at Town Hall. The public may also request a copy be sent via U.S. mail or email by requesting a copy from the Town Clerk at clerk@losgatosca.gov or Police Department at 408-354-8600. Individuals who are

unable to submit a written form may contact the Town Clerk or Police Department for assistance.

Pursuant to Cal. Pen. Code §148.6, persons willing to file a formal complaint shall provide their true identifying information and sign the Town of Los Gatos Police Department Community Complaint Form acknowledging they have read and understand the advisory on the form which is specified by law. Should a complainant submit a Town of Los Gatos Police Department Community Complaint Form bearing incomplete or fraudulent information, the complaint will only be accepted if a preliminary review of the complaint indicates reasonable suspicion that a violation of policy or law has occurred, that if proven true, would likely lead to substantial discipline or criminal prosecution of the officer(s) identified in the complaint.

PRELIMINARY REVIEW

- a. Upon receipt, copies of the completed Town of Los Gatos Police Department Community Complaint Form are sent to the Chief of Police and the Town Attorney (the "Preliminary Reviewers") for preliminary review. Within 30 Calendar days the Police Chief or their designee will notify the officer(s) identified in the complaint, in writing, that a formal complaint has been filed. This notification will also include the date the complaint was filed, a statement acknowledging the officer's rights according to POBR in the event of an investigation, and inform the officer that in the event a formal investigation is warranted, they will receive a future notice which will include the nature of the complaint, the date it allegedly occurred, possible policy or law violations, and which external investigating firm will be conducting the investigation. The Town Attorney will contact the complainant to notify them the complaint has been received. The timeline for notification of the subject officer(s) may be delayed if the Chief of Police determines the nature of the complaint is such that a criminal investigation into the officer's conduct could reasonably be compromised by notifying the officer.
- b. The Chief of Police will direct the Support Services Captain or designee to collect all relevant evidence related to the complaint (reports, video footage, audio recordings, Computer Aided Dispatch printouts, etc.) and provide it to the Preliminary Reviewers.
- c. The Chief of Police, in consultation with the Town Attorney and Human Resources Director, determines if the officer who is the subject of the investigation should be placed on administrative leave during the investigation.
- d. Formal community complaints will be reviewed by the Preliminary Reviewers within ten days of receipt. When a complaint is made against an officer alleging "serious misconduct" as defined by SB 2, "Peace officers: Certification Civil Rights" (conduct that could result in decertification), the Preliminary Reviewers or designees shall review the complaint within ten days of receipt in order to ensure compliance with

Senate Bill 2 reporting. SB 2 defines “serious misconduct” as follows:

- Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including making false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct;
- Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest;
- Physical abuse, including, but not limited to, the excessive or unreasonable use of force;
- Sexual assault;
- Demonstrating bias on the basis of any legally protected status, in violation of law or department policy, or in a manner inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner;
- Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer’s obligation to uphold the law or respect the rights of members of the public, as determined by POST;
- Participation in a “law enforcement gang”;
- Failure to cooperate with an investigation into potential police misconduct; and
- Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances,

If a complaint falls within the SB2 definition of “serious misconduct,” the Preliminary Reviewers will notify the Support Services Captain so the matter can be reported to the California Commission on Peace Officer Standards and Training (POST).

e. The Preliminary Reviewers will classify complaints as follows:

- i. **Supervisory Referral:** A Supervisory Referral is a formal complaint which contains an allegation involving a minor transgression that may best be handled by bringing the matter to the attention of the subject member’s supervisor and the chain of command to determine if the transgression occurred and the appropriate corrective action without formal investigation. All of the following objective criteria must be met for a complaint to be considered a Supervisory Referral:
 - The issue must be personnel-related,
 - Allegations of misconduct must be related to action(s) or inaction(s) by a sworn member of the Department, and
 - The allegation(s) must involve a minor transgression in which a finding of Sustained would not likely result in Substantial Discipline.

- i. **Policy Complaint:** A Policy Complaint is defined as a complaint in which sworn officer(s) took action that was determined during the Preliminary Review to be in compliance with LGMSPD policy, procedure or California or Federal Law, but for which the complainant believes the policy is inappropriate or invalid. In these cases, there is no indication a complaint is made specifically against the officer taking the action. Upon determining the complaint to be a Policy Complaint, the Policy will be reviewed and the complaint will not be placed in the officer's personnel file.
- ii. **Conduct Complaint:** A Conduct Complaint is defined as a formal complaint in which a complainant files an allegation against a sworn officer, which if true would indicate the officer violated (1) any local, state, or federal law or, (2) any Department policy or procedure, and where such actions could result in the involved officer receiving substantial disciplinary action.
- iii. **Non-Misconduct Concern:** After receiving a formal complaint alleging misconduct by a sworn officer, the Town's preliminary review may indicate that the allegations did not involve a violation of
 - (1) any local, state or federal law or,
 - (2) any Department policy or procedures. Such a complaint will be re-categorized as a Non-Misconduct Concern, meaning it does not meet the criteria outlined in the definition of a Conduct Complaint. Recategorizing complaints as Non-Misconduct Concerns allows the Town to track issues that may indicate a need for training for sworn personnel and/or community outreach/dialogue. Complaints categorized as Non-Misconduct Concerns will not be placed in the officer's personnel file.
- iv. **Demonstrably Unfounded:** When the preliminary review of a formal complaint reveals that the misconduct alleged in the complaint did not occur, based on immediately available evidence and/or recorded media, the complaint is categorized as "Demonstrably Unfounded." Complaints categorized as Unfounded will not be placed in the officer's personnel file.
- v. **Inconclusive:** A matter in which the complaining party either refuses to sign and complete the Town of Los Gatos Police Department Community Complaint Form, refuses to cooperate during the investigation or becomes unavailable after diligent follow-up. In such matters, the Preliminary Reviewers may further investigate the matter depending upon whether there are sufficient leads to establish reasonable suspicion that serious misconduct or a criminal offense has been committed by the officer(s) based upon the initial information provided. If sufficient independent evidence is not available, the complaint will be classified as "Inconclusive."

Documentation of the reasoning behind the classification will be retained by the Town

Attorney for five years from the date of disposition of the complaint.

- f. If the Preliminary Reviewers classify the complaint as a "Supervisory Referral," the complaint will be referred to a Police Captain, Police Sergeant, or Police Corporal for action, including but not limited to, training, counseling, or discipline not to exceed a Letter of Reprimand. The Police Chief or their designee will notify the officer of the outcome within 30 calendar days of the determination and the Town Attorney will notify the complainant of the outcome. The complaint and documentation of its classification will be retained in the Police Department Administrative Complaint File in accordance with the LGMSPD Retention Schedule, and will be destroyed in accordance with the same.
- g. If the Preliminary Reviewers classify the complaint as "Demonstrably Unfounded" and determine that an investigation is not warranted, the Police Chief or their designee will notify the officer of the outcome within 30 calendar days of the determination and the Town Attorney will notify the complainant of the outcome. The complaint and documentation of its classification will be retained in the Police Department Administrative Complaint File in accordance with the LGMSPD Retention Schedule, and will be destroyed in accordance with the same.
- h. If the Preliminary Reviewers classify a formal complaint as a "Conduct Complaint" involving a minor transgression of policy or procedure, the matter will be referred to the Chief of Police or designee for further investigation. The Police Chief or their designee will notify the officer(s) of the outcome within 30 calendar days of the determination and the Town Attorney will notify the complainant of the outcome.
- i. If the Preliminary Reviewers classify a formal complaint as a "Conduct Complaint" involving anything other than a minor transgression of policy or procedure, the complaint will be investigated following the procedure set forth below. The Town Attorney will notify the complainant that an investigation has been initiated.

INVESTIGATION OF COMPLAINTS CLASSIFIED AS "CONDUCT COMPLAINTS"

- a. If the Preliminary Reviewers classify a complaint as a "Conduct Complaint" and determine that an outside investigation is warranted, the Town Attorney will select an investigator from the list of approved consultants to conduct an independent investigation into the complaint in accordance with POBR.
- b. In the event an investigation is initiated, the officer will be notified within 30 days of the determination that an investigation is being initiated. This notification will include the date the complaint was filed, a statement acknowledging the officer's rights according to POBR, the nature of the complaint, the date it allegedly occurred, possible policy or law violations, and which external investigating firm will be conducting the investigation. All interaction

between the investigator and the subject officer(s) will occur within the parameters outlined in Public Safety Officers Procedural Bill of Rights Act (Gov. Code Sections 3300 – 3312).

- c. The investigator will contact the complaining party (by phone preferably), introduce themselves as the investigator for the complaint and outline the investigation process.
- d. The investigator's scope of work will include, but not be limited to:
 - Provide all work in a confidential manner.
 - Provide an investigative plan detailing the issues to be investigated, witnesses to be interviewed, evidence to be reviewed and/or collected, and an estimated timeline for the investigation.
 - Determine the most appropriate investigative method(s) to be used for each investigation in conjunction with the Town.
 - Conduct investigation to include interviewing witnesses, complainants, the officer named in the complaint, and other persons; gathering documents, video, and other materials; administering oaths and examining persons, affidavits, and supporting documentation; and otherwise conducting all research necessary and gathering all evidence sufficient to complete each assigned investigation.
 - Review and evaluate all evidence gathered in each investigation to formulate defensible investigative conclusions regarding the alleged violations. Request additional evidence and/or resource material, if necessary, as the investigation progresses.
 - Provide updates on the progress of the investigation at each phase of the investigation, including any anticipated changes to the established timeline as requested by the Town.
 - Write a report utilizing the format consistent with Log Gatos Monte Sereno Police Department policy relating to Administrative Investigations:

Introduction – Include the identity of the members, the identity of the assigned investigator, the initial date and the source of the complaint.

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

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

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

Conclusion – A recommendation that the complaint be Sustained, Not Sustained,

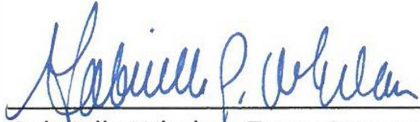
Unfounded, or Exonerated.

- Submit a final written report with supporting documentation, findings, and recommendations with all evidence, and applicable materials to the Town Attorney. The investigator's findings and conclusions are advisory only and do not impact the full range of judgment and discretion afforded the Town.
 - Conduct a de-briefing session with the Town Attorney, Human Resources Director, and Chief of Police or designee.
 - Participate in administrative hearings, in court, or other official proceedings that result from the investigations.
 - In the event that the investigator learns of possible "serious misconduct" that is reportable to POST in accordance with Senate Bill 2, the investigator will immediately inform the Chief of Police and the Town Attorney.
- e. The report is reviewed by the Town Attorney to ensure the facts support the findings.
- f. Once the investigator's report has been completed and approved by the Town Attorney and if any of the allegations are sustained, a copy is submitted to the Support Services Captain or designee. If after reviewing the report and its findings, the Support Services Captain or designee disagrees with the findings, the Town Attorney will consider their concerns and determine if the investigator needs to do additional work to substantiate the findings.
- g. In the event there is no consensus on the findings, the Town Attorney may direct another investigator to evaluate the facts, materials, and methods and determine its own independent conclusions/findings. The second independent investigator's analysis must be prepared to the satisfaction of the Town Attorney consistent with the procedure for the first independent analysis. If the second investigator's report results in a different set of findings, the Town Attorney in consultation with the Chief of Police will determine which analysis stands.
- h. Upon approval of the report, and after the subject officer(s) appeal/Skelly rights have been exhausted, the Town Attorney informs the complaining party of the completion of the investigation and the findings of the investigation. The findings will be retained in the officer's personnel file. The investigative report and evidence will be retained by the Police Department in a separate internal affairs file and destroyed at a later date in accordance with the LGMSPD Retention Schedule.
- i. If the allegations are sustained, the Chief of Police or their designee will determine the appropriate discipline for the officer(s) based on the findings. Discipline may need to be coordinated with the Human Resources Director to ensure appropriate appeal/Skelly rights of the employee. The Chief of Police or their designee will notify the officer of the

intended discipline and offer appropriate appeal rights. The complaint and findings will be retained in the officer's personnel file. The investigative report and evidence will be retained by the Police Department in a separate internal affairs file. and destroyed at a later date in accordance with the LGMSPD Retention Schedule

- j. If the allegations are not sustained, exonerated, or unfounded, the Chief of Police or designee informs the officer(s) of the completion of the investigation and the findings. The complaint and findings will be retained in the officer's personnel file. The investigative report and evidence will be retained by the Police Department in a separate internal affairs file and destroyed at a later date in accordance with the LGMSPD Retention Schedule.
- k. The Town Attorney writes a brief summary of the complaint (the nature of the complaint and key "facts" without names or sensitive information provided), review and investigation steps, and findings for inclusion in an annual report to the Town Council and community.

APPROVED AS TO FORM:



Gabrielle Whelan, Town Attorney