

CITY OF PORTLAND, MAINE

CIVIL SERVICE COMMISSION

POLICE CITIZEN REVIEW SUBCOMMITTEE

RULE ESTABLISHING PROCEDURES

FOR REVIEW OF INTERNAL POLICE INVESTIGATIONS

I. Introduction

The following procedures shall govern the process of reviewing police department internal investigations to determine whether the investigations are conducted in a thorough, fair, objective and timely process.

II. Application

The Subcommittee shall review the internal affairs investigation of the following citizen complaints against police officers:

- a. complaints alleging excessive force;
- b. complaints alleging civil rights violations;
- c. complaints alleging conduct that would constitute a criminal offense;
- d. any complaint that the subcommittee deems necessary to review in order to carry out its duties; and
- e. any complaint that the complaining party requests the subcommittee to review.

All such reviews shall be only of cases closed on or after January 1, 2002. Cases shall be "closed" only after final disciplinary action has been taken and all appeals exhausted or the case has been finally closed with no disciplinary action taken.

III. Procedures

A. Case Review

1. The police department will provide the Subcommittee with a minimum of three (3) copies of each completed internal affairs investigative report that is subject to subcommittee review. All such copies of reports shall be provided promptly once a case is closed. Unless otherwise unanimously agreed, cases will be reviewed in the order in which they are closed by the Department and provided to the Subcommittee. "Closed" shall have the same meaning as in Section II above.
2. The copies will be maintained in the Office of Corporation Counsel in City Hall.
3. Each of the Commissioners will review each internal affairs investigative report. Depending upon need, the Chair may assign a lead reviewer to a case.
4. Internal affairs reports may be read at the Corporation Counsel's office or "checked out" from the Office by a Commissioner for a period of up to three (3) days. Each Commissioner is responsible for maintaining the confidentiality of reports, including but not limited to the protection of the confidentiality of the officers involved in the case.
5. The Subcommittee will establish an evaluation checklist, to be included in each copy of the investigative report, to assist the Commissioners with the case review.

6. If appropriate, the Subcommittee will establish a calendar of completion dates for the case review.

B. Citizen Requests for Case Review

1. Citizen requests for review of internal investigations in which they are the complaining party shall be made in writing to the Corporation Counsel or to the Chief of Police. Only closed complaints, as defined above, are eligible for review.
2. The subcommittee shall inform the citizen of the status of his request within forty-five (45) days of the citizen's request, including a timetable for completion of Subcommittee review.
3. The subcommittee shall advise the citizen requesting the review and the City Manager in writing of the completion of its review, subject to confidentiality requirements.

IV. Case Discussion

A. Review and recommendations.

After each Commissioner has had an opportunity to review a particular case or cases, the Subcommittee shall discuss the case or cases to determine if the investigation was thorough, fair, objective and timely. Discussion of a specific investigative report will be done in compliance with any applicable confidentiality requirements of State law, particularly the Personnel Records Law, 30-A M.R.S.A. Section 2702, copy attached. Any discussions conducted in executive session shall be kept confidential. Discussion of reviews and recommendations, without disclosure of confidential information, will be held in open session and

any votes will be conducted in open session. The Subcommittee will attempt to reach a consensus on the thoroughness, fairness, objectivity and timeliness of each investigation, but if consensus cannot be reached, any areas of disagreement or of particular concern will be noted. All public discussion will be done in such a manner as to maintain required confidentiality of the case or cases.

B. Public Comment.

Public comment may be taken as appropriate on matters discussed in open session. Comment by each person shall be limited to 3 minutes unless extended for an additional 3 minutes by unanimous vote of the Subcommittee.

V. Conflicts of Interest.

Any Commissioner with a potential conflict of interest regarding a particular case shall inform the Subcommittee of the potential conflict. Each Commissioner is responsible for disclosing to the Subcommittee the nature and scope of any potential conflict of interest and any question of whether a Commissioner has a conflict of interest sufficient to disqualify the Commissioner from review and discussion of a particular case or cases shall be decided by majority vote of the Commissioners present, except the Commissioner whose possible conflict is being examined. In the event of a tie vote, the Commissioner shall be disqualified from participating in that case review. A potential "conflict" for purposes hereunder shall include, but not be limited to, any pecuniary interest in a particular case, or the appearance of a conflict of interest, such as a personal or professional relationship with any of the officers or witnesses involved in a case.

VI. Reports to the City Manager

A. Periodic Reports.

The Subcommittee shall periodically, but no less than annually, report to the City Manager on the Subcommittee's determination regarding the thoroughness, objectivity, fairness and timeliness of the police internal affairs investigation of citizen complaints against police officers. The Subcommittee may include in the report to the City Manager the consensus of the Subcommittee regarding particular investigations, to the extent it is able to do so without violating confidentiality, including any points of disagreement or of particular concern. The Report shall include a statistical analysis of all cases reviewed, including an analysis of trends and patterns of complaints or results of investigations of complaints. If appropriate, the Subcommittee may vote to bring a particularly egregious procedural deficiency immediately to the attention of the City Manager.

B. Recommendations.

The Subcommittee shall periodically report to the City Manager any recommendations and/or proposals for improvements or modifications in the police internal affairs investigative process, Department policies or training. In addition, the Subcommittee may also make recommendations and/or proposals for enhancing public confidence in the methods and process of investigation of citizen complaints against police officers. This may be done separately or as part of the Periodic Report(s).

C. Form of Report.

All reports of the Subcommittee shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable, with the intent that all such reports shall be public documents.

D. Public Hearing

The Subcommittee will hold a public hearing at least annually to receive comments upon the police citizen complaint process, but not upon individual complaints. The hearing will be publicized in the same manner as other City meetings.

VII. Requests for Information

All requests for information will be referred to the Corporation Counsel for review prior to release or disclosure.

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Approved by City Council by Order #103, 11/18/02

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Part 2: MUNICIPALITIES (HEADING: PL 1987, c. 737, Pt. A, @2 (new))

Subpart 3: MUNICIPAL AFFAIRS (HEADING: PL 1987, c. 737, Pt. A, @2 (new))

<http://janus.state.me.us/legis/statutes/30-A/title30-Ach123sec0.html>

Subchapter 6: MUNICIPAL EMPLOYMENT (HEADING: PL 1987, c. 737, Pt. A, @2 (new))

§2702. Personnel records

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

(1) Notwithstanding any confidentiality provision other than this paragraph applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

[1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd); c. 402, §3 (rpr).]

B. Municipal records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public. For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

[1997, c. 770, §3 (amd).]

C. Other information to which access by the general public is prohibited by law. [1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]
[1997, c. 770, §3 (amd).]

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or [1991, c. 729, §7 (new).]

B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury. [1991, c. 729, §7 (new).]

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

[1991, c. 729, §7 (new).]

2. Employee right to review. On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

[1987, c. 737, Pt. A, §2 and Pt. C, §106 (new); 1989, c. 6 (amd); c. 9, §2 (amd); c. 104, Pt. C, §§8, 10 (amd).]