

CHAPTER 6 – INTERNAL INVESTIGATIONS, SUPERVISORY INQUIRIES

6.01 Purpose. To insure public confidence in our ability to self investigate. The public has a right to expect efficient, fair, and impartial law enforcement. The function of receiving complaints and conducting appropriate investigations is a vital component in the maintenance of professional conduct within the Law Enforcement Division. This section will direct those efforts by establishing procedures and creating the ethical standards demanded by the public and to protect the integrity of the division.

6.02 Protection of the Division. Although the Law Enforcement Division is often evaluated and judged by the action of individual members, it is imperative that the entire organization not be subjected to public censure because of misconduct of a particular individual. The public must have confidence that the Law Enforcement Division will investigate and adjudicate allegations of misconduct against its employees.

6.03 Protection of Employee. Employees must be protected against false allegations of misconduct. The best protection of the employee will be the complete and thorough investigation of the complaint in a timely manner.

6.04 Policy. It shall be the policy of the Law Enforcement Division to inquire into or investigate complaints against or allegations of misconduct committed by members of the Law Enforcement Division, whether initiated by employees of the department or citizens.

Employees shall conduct themselves in a manner that will not bring discredit or embarrassment to the State of Vermont, whether on or off duty. Conduct by wardens while off duty, when connected to work-related performance standards or which may reflect unfavorably on the state, may be subject to inquiry or investigation. Nothing in this policy should be construed as being contrary to the current VSEA contract.

6.05 Training Standards. It is in the best interest of the Law Enforcement Division that its policies stay current and meet the demands of the public and employees. Investigating complaints of misconduct may disclose flawed procedures or failure to adequately train. These procedures can then be corrected and/or measures taken to improve the training of employees.

6.06 Investigating Wardens. Shall be limited to “lieutenants.” However, the final determination of investigative personnel shall be at the discretion of the commissioner. The investigating warden(s) shall establish a priority in devoting their time to the investigation of the complaint.

6.07 Authority. The colonel shall be responsible for the overall supervision, administration, and investigation of all complaints of the Law Enforcement Division and shall report directly to the commissioner of the Fish & Wildlife Department on all matters relating to the investigation of employee misconduct.

The investigating warden is, “designated as an official representative of the commissioner and all personnel are ordered to cooperate with the investigation and respond to all questions regardless of position.”

6.08 Procedure. All complaints against Law Enforcement Division personnel will be received and recorded on a standard numbered Misconduct Complaint Form and referred to the warden's immediate supervisor whenever possible. Complaints initiated by an employee's immediate supervisor will normally be investigated by those supervisors.

1.0 Whenever a division member receives a complaint against a member of the division from any source or observes or receives information from any source that another member has allegedly violated a law, rule, regulation, or order of the division whether it be in person, by telephone or in writing, the division member shall immediately notify the supervisor of the employee involved. If the allegations involve acts of criminal conduct against a member of the division, the accepting division member shall take immediate steps to notify the commissioner through the appropriate chain of command.

2.0 If an allegation is made by a member of the division, it shall be in writing, dated and signed. The allegation shall include the alleged act of misconduct and all related facts known to the member.

3.0 The immediate supervisor receiving the complaint shall interview the complainant in person whenever possible or, if circumstances prevent an in-person interview, by telephone without unnecessary delay, and complete a Misconduct Complaint Form.

4.0 Whenever possible, a complaint should be in writing, dated and signed. However, the refusal to file a dated and signed complaint may not preclude an investigation but may impair the ability of the investigator to conduct a thorough investigation.

5.0 Verification of Complaints Received: Verification shall be in the form of a receipt furnished to persons initiating complaints alleging misconduct and that an investigation is in process. This standard does not apply to anonymous complaints.

6.0 Complaint Classification: Complaints may allege one or more of the following:

- conduct by a division member that may tend to reflect unfavorably upon the employee or on the Law Enforcement Division
- violation of policies, rules, or procedures by a member of the division
- neglect of duty by a member of the division
- commission of a crime

7.0 Filing Time Limitations: Complaints alleging misconduct made anonymously and/or more than one (1) year after the date of the alleged incident will be investigated only if so directed by the colonel or commissioner.

8.0 Complaints from Persons Under Investigation: The integrity of a criminal investigation must be protected. In the event a complaint is received from an individual who is also the subject of a warden's investigation, the warden's investigation shall continue unabated unless the warden is:

- charged with a crime
- found to be continuing in specific egregious misconduct during the course of the investigation

9.0 Complaint Investigation Category: Complaint investigations shall be categorized as:

- preliminary inquiries
- supervisory inquiries
- internal investigations (By order of the commissioner only)

10.0 Preliminary Inquiries: Appropriate allegations of misconduct involving violations of Division policies, rules, and procedures which would not normally subject the division member to possible dismissal for a first offense, including, but not limited to:

- lack of respect or courtesy
- failure to perform to established work standards
- failure to respond or take appropriate action
- procedural violations
- abuse of authority not involving a criminal act or excessive force
- inappropriate public behavior
- conduct unbecoming an Warden

11.0 Supervisory Inquiries: Appropriate allegations of misconduct involving a serious violation of Division policy, rules, or procedures which may subject the employee to disciplinary action, including, but not limited to:

- violation of oath
- false statements
- misuse or abuse of state property
- public intoxication
- demeaning public behavior
- insubordination
- substance abuse

12.0 Internal Investigation: By order of the Commissioner only. Internal investigations will be initiated upon allegation of violations of law or major violations of Division policies, rules and/or procedures, which may subject the employee to suspension or dismissal including, but not limited to:

- commission of a crime
- malfeasance in office
- breach of confidentiality
- acceptance of bribe or illegal compensation
- excessive force
- sexual harassment
- domestic violence

13.0 Criminal Conduct: If a crime is alleged, the supervising Lieutenant, in coordination with the Colonel, shall give notice to the prosecutor having jurisdiction on the matter. The prosecutor will make a determination if criminal charges will be made and, if so, the Commissioner in coordination with the prosecutor shall decide if the internal investigation shall parallel the

criminal investigation or defer the administrative internal investigation until the criminal investigation is concluded

14.0 Findings: The investigating warden whether conducting a preliminary inquiry, supervisory inquiry, or an internal investigation shall determine if the basis for the complaint is: (14.1) Unfounded, (14.2) Founded, or (14.3) Exonerated, based on the following definitions:

14.1 Unfounded: A determination that the allegations are false or not factual.

14.2 Founded: A determination supported by a preponderance of evidence that the incident occurred.

14.3 Exonerated: A determination that the incident occurred, but the employee's actions/conduct were justified, lawful, and proper.

15.0 The preliminary inquiry shall be completed within five (5) working days, unless extended for good cause by the colonel, and the results including findings forwarded to the colonel. If the complaint is founded and in consideration of the nature of the allegation, the colonel may direct a supervisory inquiry. Otherwise, the complaint may be adjudicated by less formal procedures, i.e., verbal reprimand, written reprimand, and/or remedial training.

16.0 Upon acceptance and approval of a Misconduct Complaint Form by the colonel, the investigating lieutenant shall not initiate or conduct any further inquiry on that allegation unless directed to do so by the colonel.

17.0 The supervisory inquiry investigation shall be completed within 15 working days, unless extended for good causes by the colonel, and the results, including findings, forwarded to the colonel. The colonel shall have the option of taking corrective action or forward the matter to the commissioner for disciplinary action. The commissioner shall, at his/her discretion and after careful review of the material and the warden's work record, determine whether the materials presented warrant initiation of disciplinary action. Any disciplinary action taken due to the previously described investigations shall follow the current agreement between the State of Vermont and the Vermont State Employees Association.

18.0 Internal investigations shall be completed within 30 days and the results, including findings, forwarded to the office of the commissioner. Final resolution of an internal investigation, including findings, shall be completed within 45 days and notification made to the subject employee. The commissioner reserves the right to extend the due date of an internal investigation. The investigation report or any facts of the investigation may not be released to the public pursuant to Title 1 V.S.A. 317(c)(5), (7). Add (24).

6.09 Format

1.0 All statements made by witnesses or complainants shall be:

- written or mechanically recorded If the statements are in writing, they should be sworn to and notarized.

2.0 A written report shall be completed for filing and shall include the following:

- Alleged Offenses: Description and nature of each.

- Complainants: Name or names and addresses and telephone numbers of all complainants.
- Method of receipt of complaint
- Names of person or warden receiving complaint
- Name(s) of warden(s) assigned to investigate
- A List of all attached materials and exhibits, i.e., taped or written statements. The wardens investigating shall mark materials with a reference by name and number to the case.
- Details of Investigations should include date, time, and place of interviews.
- Findings: The report shall conclude with findings and be submitted to the office of the commissioner through the colonel.

6.10 Employment Notification. Written notification will be provided to the subject employee of an internal investigation along with a description of rights and responsibilities relative to the investigation. The commissioner reserves the right to withhold or postpone notification if, in the recommendation of the investigating warden, it would compromise the integrity of the investigation. The integrity of the investigation must always be protected until the extent of the allegations has been determined.

6.11 Notification of Final Disposition. Notification to subject employee of the final disposition and, in the case of founded misconduct, what further action will be taken by the department.

6.12 Notification of Results. Only the final disposition (findings) shall be disclosed and, if the allegation is founded, notification that appropriate disciplinary action will be taken.

6.13 Relief From Duty. The commissioner, colonel, or lieutenant may temporarily relieve a member of the division from duty with pay for a period of up to thirty (30) workdays, consistent with the provisions of the Non-Management Unit collective bargaining agreement. While in a relieved-from-duty status, the employee shall, upon request of the investigating/inquiring warden, be available for interviews.

6.14 Employee Responsibilities

1.0 Any member, including the member against whom an allegation was made, may be ordered to appear before the investigator at a reasonable time and place to submit to questioning.

2.0 During the course of an investigation, any member, including the member against whom the allegation was made, must answer fully and truthfully all questions asked by the investigator, which are specifically directed and narrowly related to the allegation under investigation. Members are compelled to answer. Garrity v. New Jersey, 385 US. 493 (1967).

3.0 Disciplinary action, including dismissal, may be taken against any member who lies and/or refuses to fully and truthfully answer any such question(s) asked by the investigator.

4.0 Statements given by any member may be used against the member in disciplinary proceedings. However, no statements given by a member may be used against the member in any criminal proceedings which the member is the defendant.

6.15 Employee Rights

1.0 A member against whom a complaint has been made and is subject to an investigation shall be afforded all rights and protections provided by law and the Non-Management Unit collective bargaining agreement.

2.0 Notice of right to representation:

2.1 A right to the presence of VSEA representative when the warden is compelled to answer or when required to give oral or written statements on an issue involving the warden, which may lead to discipline.

2.2 A division member who is subject of an investigation may have an attorney present during such interview. However, the presence of an attorney or other representative shall not relieve the member from his/her obligation to answer fully and truthfully all questions asked.

2.3 Right to representation whenever the warden is called to a meeting with the colonel and/or commissioner where discipline is to be imposed.

6.16 Confidentiality of Investigations. The integrity of the investigation must always be protected as well as the dignity and reputation of the member employee. Therefore, no division member shall discuss or otherwise disclose any information that he/she may possess concerning the content of misconduct allegations lodged against another warden or the existence of a personnel complaint or supervisory inquiry to any person not directly associated with the investigation. Failure to comply with this order shall constitute willful insubordination and may subject the employee to disciplinary action.

6.17 Confidentiality of Records. All complaint records, supervisory inquiries, and internal investigation reports shall be kept secure and separate from personnel records. If the complaint is founded and disciplinary action is taken, a record of the disciplinary action taken shall be placed in the warden's personnel file, stating that it is the result of a complaint investigation.