



## DIVISION OF POLICE

**DATE:** April 30, 2020

**TO:** Chief of Police Calvin D. Williams

**FROM:** Inspector General Christopher Paul Viland, Esq., CIG®, #3700

**SUBJECT:** Review and Analysis of Current Division Employee Misconduct Investigation Policies for Compliance with Standards Set by the Ohio Collaborative Community-Police Advisory Board

Sir,

This memorandum has been prepared to serve informationally as guidance when determining whether current City of Cleveland, Division of Police (the Division, CDP) policy regarding investigations of employee misconduct meets a standard that has been set and published by the Ohio Collaborative Community-Police Advisory Board (the Collaborative).

In 2018, the Collaborative established a standard regarding investigations of employee misconduct<sup>i</sup> which has been published and is deemed a mandatory consideration for compliance with Collaborative review and assessment, should an Ohio law enforcement agency voluntarily enter into that process. The Division is currently not participating in that process.

In February of 2020, the Division published updated policies and procedures for the handling of complaints of employee misconduct, generated either from the public or internally<sup>ii</sup>. These policies were promulgated in compliance with cooperative processes with the United States Department of Justice (the DOJ) under the auspices of a Settlement Agreement<sup>iii</sup>.

As a preliminary matter, it must be noted that compliance with Collaborative standards is not mandatory at this time. Additionally, current policy has been developed with stakeholder input and in cooperation with the DOJ, seeming to obviate any need to meet any other or unessential standards. Nonetheless, this review is being presented as part of a series of informational memoranda detailing compliance with various Ohio Collaborative standards.

In the alternative, this information may be utilized as needed by the Division in any instance where an explanation may be necessary in demonstrating where and why the Division's policy is or is not fully complaint with standards outside the scope of the considerations of the Division, its stakeholders, and the DOJ.

To restate, however, this memorandum is a review specifically of how current Division policy complies with standards promoted by the Collaborative. It is **not** a review of best practices or recommendations for improvements to policy or procedure otherwise.

It must be additionally noted that several of the aspects of this Collaborative standard are not within the purview of the Division in the way that the City of Cleveland has set up its organizational structure. Certain aspects of the complaint processing and investigation scheme are entirely the responsibility of the City of Cleveland Office of Professional Standards, an independent civilian body within the Department of Public Safety, over which the Division has no direct responsibility or control.

### **STANDARD 3.2018.7 – Investigation of Employee Misconduct**

The Collaborative standard has six separate requirements, as enumerated below and separately reviewed:

A written directive on investigations of employee misconduct shall include:

1. Policy statements in support of the Ohio Collaborative guiding principles.
2. Describe formal complaint processes, outline how and where to file a complaint.
3. Outline procedures for accepting, processing, and investigation the complaint.
4. Have a timeline for resolution for the complaint.
5. Include safeguards to protect legal and contractual rights of employees.
6. Ensure the public has access to complaints and / or commendations through social media or the agency's community relations program.<sup>iv</sup>

Guiding Principles: “A well-constructed complaint process is an integral tool in community-police relations. There is a significant impact when a community knows and understands its concerns can be legitimately addressed in a proper setting. Further, officers can be better served when they can refer aggrieved individuals to a trusted process. Neither officers nor community members benefit from attempts to have concerns addressed and redressed during a traffic stop or in the midst of an incident. It may prove beneficial for law enforcement agencies to reach out to community members in an effort to publicize, promote and develop processes that are mutually beneficial to all.”<sup>v</sup>

Provision 1 –

The Division's current Public Complaints of Misconduct policy contains a clear purpose statement, “Members of the Cleveland Division of Police have a continuing obligation to serve the community in a responsible, professional and accountable manner. An integral aspect of this obligation is to ensure that Division policies and procedures are complied with in a reasonable and effective manner. To meet this obligation, the Division will provided a readily accessible



process through which all members of the public, as well as members of the Division have confidence that complaints against a member will be promptly and objectively investigated and resolved. Such investigations not only provide for corrective action when appropriate, but also protect against unwarranted criticism when policies and actions are administered correctly and in compliance with proper procedures. Furthermore, a timely and thorough investigation serves to protect members of the public from police misconduct and members from complaints that are retaliatory, manipulative or result from the misunderstanding of police protocol.<sup>vi</sup>”

The Division has established a strong policy statement regarding complaints of employee misconduct which is consistent in: identification that complaint processes are integral to police-community relations, provision of a proper setting to engender trust, and creation of a substantial referral process, all in support of Collaborative guiding principles<sup>vii</sup>. The Division and the City advertise the complaint process in several ways, including detailed descriptions and instructions on the City’s dedicated web pages<sup>viii</sup>.

It is apparent that the Division has expressed its philosophy and purpose in the institution of its investigations of employee misconduct policy so that it is strong and consistent and supportive of Collaborative principles. The Division’s policy meets this provision of the Collaborative standard.

#### Provision 2 –

Current Division policy gives specific, detailed procedures for accepting complaints in person at any number of venues including any district, City Hall, the scene of incident, or the Office of Professional Standards<sup>ix</sup>. It further gives procedures for accepting complaints by phone, fax, regular mail, or email with specific direction that “All complaints, regardless of the perceived severity, shall be accepted, investigated and documented...”<sup>x</sup>

Current Division policy is in compliance with this provision of the Collaborative standard.

#### Provision 3 –

With regard to acceptance and processing of complaints against members, current Division policy directs that all members must accept complaints from any source<sup>xi</sup>. Guidance is provided as to what to do when the complaint is against another member of the Division, or whether the complaint is against the member themselves<sup>xii</sup>. Direction is given to supervisory staff as to processing of complaints against members<sup>xiii</sup>. Procedures are provided for documenting complaint forms, disseminating copies and forwarding for action<sup>xiv</sup>.

Procedures for investigation of these complaints is detailed either in the current Office of Professional Standards Operating Manual Procedures<sup>xv</sup> or the Division's separate Internal Complaints of Misconduct policy<sup>xvi</sup>.

In the aggregate, Division policy and Office of Professional Standards operations are in compliance with this provision of the Collaborative standard.

#### Provision 4 –

Current Division policy requires that any complaints received must be processed by a supervisor and forwarded to the Office of Professional Standards by the end of their current tour of duty<sup>xvii</sup>.

The Office of Professional Standards operating manual provides that standard investigations should be substantially complete within 45 days and complex investigations should be complete within 75 days<sup>xviii</sup>. Complaints that rise to the level of criminal conduct must be referred to the Division's Internal Affairs Unit within 24 hours<sup>xix</sup>.

These strict policy timelines result in full compliance with this provision of the Collaborative standard.

#### Provision 5 –

The current Division Public Complaints of Misconduct policy is silent regarding explicit legal and contractual protections of members, as is the current Internal Complaints of Misconduct policy, though it must be said that neither of those policies deal directly with the majority of specific internal investigative processes.

The Office of Professional Standards operating manual does detail procedures for incorporating a member's union representative into the interview and investigation process<sup>xx</sup>. Similarly, the Division's current Internal Affairs Policies and Procedures Manual provides for specific protection of employee rights including, "During an internal investigation, members will be afforded all of their Divisional, collective bargaining, and Constitutional rights.<sup>xxi</sup>" The Division provides specific guidance with regard to employee rights pursuant to *Garrity v. New Jersey*, and how an allowed union representative or legal counsel is to interplay in the investigative process<sup>xxii</sup>.

In the aggregate therefore, again, policies and procedures applicable to the investigation of complaints of employee misconduct in the CDP are in compliance with this provision of the Collaborative standard.

Provision 6 –

The Office of Professional Standards web page<sup>xxiii</sup> currently provides near real-time, publicly available, searchable updates on complaint investigations (as recommended in prior OIG correspondence<sup>xxiv</sup>) on an individual, case-by-case basis; although no aggregate data is available.

Division commendations are publicized in several ways: bi-annually on the City’s website at the time commendation award ceremonies, on individual neighborhood district social media platforms (i.e. Facebook®), and on the web page and social media platforms of the Cleveland Police Foundation<sup>xxv</sup>. That being said current Division general policy is silent as to public access to complaints or commendations through social media or community relations systems.

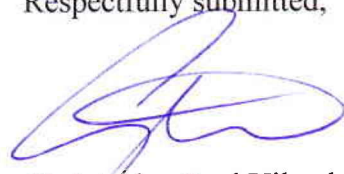
The Division’s employee misconduct investigation policy, while pragmatically following the tenets of this provision, is currently not in formal compliance with this provision of the Collaborative standard.

**SUMMARY**

The current Cleveland Division of Police General Police Orders and Office of Professional Standards Operations Manual provisions which provide for investigations of employee misconduct are, in sum, compliant with all but the last provision of standard 3.2018.7, Investigation of Employee Misconduct, as published by the Ohio Collaborative Community-Police Advisory Board.

The Office of the Inspector General has no further comment or recommendations regarding this review.

Respectfully submitted,



Christopher Paul Viland, Esq., CIG®  
Inspector General, #3700  
Cleveland Division of Police  
Work Product Number 20010-R

cc: *via email only:* Deputy Chief J. O’Neill  
Hon. Gregory White



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- <sup>i</sup> Ohio Collaborative Community-Police Advisory Board, Standard 3.2018.7 Investigation of Employee Misconduct, <https://www.ocjs.ohio.gov/ohiocollaborative/law-enforcement.html>, as downloaded 4-23-20.
- <sup>ii</sup> City of Cleveland, Division of Police, General Police Order 1.07.04 Public Complaints of Misconduct, and General Police Order 1.07.05 Internal Complaints of Misconduct, February 21, 2020.
- <sup>iii</sup> *United States of America v. City of Cleveland*, United States District Court, Northern District of Ohio, Eastern Division, 1:15 CV 01046, Settlement Agreement, June 12, 2015.
- <sup>iv</sup> Ohio Collaborative Standard, *supra* note i.
- <sup>v</sup> *Id.*
- <sup>vi</sup> Cleveland General Police Order, GPO 1.07.04, *supra* note ii, at pg. 1.
- <sup>vii</sup> *Id.*
- <sup>viii</sup> *See, e.g.*, <http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/OPS/ComplaintProce> [ss](http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/OPS/ComplaintProce), as downloaded 4-29-20; <http://clevelandohio.gov/node/161660>, as downloaded 4-29-20.
- <sup>ix</sup> *See*, Cleveland Police General Order, GPO 1.07.04, *supra* note ii, at Section II(B).
- <sup>x</sup> *Id.* at Sections II(B) and I(A).
- <sup>xi</sup> *Id.* at Section II(A).
- <sup>xii</sup> *Id.* at Sections III & IV.
- <sup>xiii</sup> *Id.* at Sections III(C) & IV(B).
- <sup>xiv</sup> *See, Id.* at Sections III(B)(c), III(B)(d), III(C)(2&3), IV(B)(1)(b).
- <sup>xv</sup> City of Cleveland, Office of Professional Standards, Operating Manual and Procedures, last amended February 7, 2017, [http://www.city.cleveland.oh.us/sites/default/files/ops\\_publications/OPS\\_Manual.pdf](http://www.city.cleveland.oh.us/sites/default/files/ops_publications/OPS_Manual.pdf), as downloaded 4-29-20.
- <sup>xvi</sup> Cleveland General Police Order, GPO 1.07.05, *supra* note ii.
- <sup>xvii</sup> *Id.* at Sections II(C&D) & III(C).
- <sup>xviii</sup> OPS, Operating Manual, *supra* note xv at ¶501.
- <sup>xix</sup> *Id.* at ¶304.
- <sup>xx</sup> *Id.* at ¶407(e).
- <sup>xxi</sup> City of Cleveland, Division of Police, Internal Affairs Unit Policies and Procedures Manual, at Section IX(C).
- <sup>xxii</sup> *Id.* at Sections IX(C-F).
- <sup>xxiii</sup> *See, e.g.*, <http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/OPS/ComplaintProce> [ss](http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/OPS/ComplaintProce), as downloaded 4-29-20.
- <sup>xxiv</sup> City of Cleveland, Division of Police, Office of the Inspector General, Memorandum - Familiarization with and Recommendations RE IA Pro® Software, December 6, 2019 (unpublished, on file with the author), at Recommendation #3.
- <sup>xxv</sup> *See*, <https://www.clevelandpolicefoundation.org/awards/annual-awards-archives/>, as downloaded 4-29-20.