

	<h1>Garner Police Department</h1> <h2>Written Directive</h2>	
	Chapter: 300 - Personnel Management	
	Directive: 320.01 - Complaint Investigation	
Authorized by: Chief Brandon Zuidema		Effective Date: August 1, 2017
CALEA Standards: 26.2.1, 26.2.2, 26.2.3, 26.2.4, 26.2.5, 26.3.1, 26.3.2, 26.3.3, 26.3.4, 26.3.5, 26.3.6, 26.3.7, 26.3.8.		Last Revision: July 1, 2016

320.1.1 - Purpose

The purpose of this directive is to establish guidelines controlling the investigation of complaints involving the Garner Police Department and/or our employees so that we instill and maintain public trust in the organization and ensure sound ethical behavior by all employees.

More detailed procedures and information regarding complaint investigation is found in the Department's Internal Affairs Manual.

320.1.2 – Policy

It is the policy of the Garner Police Department to receive, document, investigate, and promptly resolve all complaints against the Department or any of its employees, regardless of the manner in which the complaint is received, to include anonymous complaints.

It is the policy of the Garner Police Department to address concerns that do not rise to the level of a complaint involving a substantial violation of Department policy and/or the law.

It is the policy of the Garner Police Department to train all Department employees on this policy and on relevant State and Federal Statutory and Case Law to ensure that employees understand their rights and responsibilities. Employees will receive training at their time of hire and at other times deemed appropriate by the Chief of Police. All employees will have access to this policy via the Department's electronic directive management system.

320.1.3 – Definitions

- A. Allegation of Serious Misconduct – A complaint against an employee that alleges an act or failure to act that constitutes the following:
1. A breach of civil rights, brutality, corruption, criminal misconduct, excessive or inappropriate use of force, or a similar serious allegation;
 2. Conduct Unbecoming a Police Officer – defined as any conduct or omission, while on or off duty, that:
 - a. Tends to bring the Department into disrepute;
 - b. Reflects discredit upon the employee or the Department; or
 - c. Tends to impair the operation and/or efficiency of the employee or the Department.

3. "Detrimental Personal Conduct" as defined in Part IX, Section 8 of the Town of Garner Personnel Policies and Procedures Manual; or
4. A violation of criminal law.

NOTE: It is not necessary for an employee to be convicted in court of a criminal violation in order for those same circumstances to constitute a sustained allegation. An accepted pleading of "Prayer for Judgment" also does not exclude a sustained allegation.

- B. Concern – Information received from the public regarding an employee's performance that even if true, would not constitute a policy violation. In addition, a complaint can be handled as a concern if the allegation is specious on its face with no investigation.
- C. "Garrity" Warnings – In accordance with the United States Supreme Court case *Garrity vs. New Jersey*, warnings read to an employee ordering them to make a statement in an administrative investigation and limiting all information provided to the administrative investigation (ensuring the employee's constitutional rights against self-incrimination in a criminal matter).
- D. Internal Affairs Administrator – A member of the command staff assigned by the Chief of Police to coordinate internal affairs tracking, training, and annual reporting.
- E. Internal Affairs Investigator – A member of the command staff assigned by the Chief of Police to investigate a performance complaint or an allegation of serious misconduct.
- F. Internal Investigation – An investigation of the actions of an employee conducted by a supervisory employee of the Department.
 1. Administrative Investigation – An investigation conducted by supervisory Department staff for internal administrative purposes and related to performance complaints and allegations of serious misconduct.
 2. Criminal Investigation – An investigation conducted by Department supervisory staff and/or another appropriate investigative agency for the purpose of determining if an employee's actions constitute a criminal violation.
- G. Performance Complaint - A complaint against an employee that alleges an act or failure to act that constitutes a violation of a Town or Department policy that does not rise to the level of an allegation of misconduct. This typically involves a complaint regarding demeanor, improper conduct, improper police action, policy violations, or a similar non-serious allegation.

320.1.4 - Receipt of Complaints (26.2.1; 26.2.4; 26.3.2)

- A. The Department will make public its procedures for registering complaints through the community relations program, the Internet and the news media.
- B. The Garner Police Department will receive, document, investigate, and resolve all complaints against the Department or any of its employees, regardless of the manner in which the complaint is received.
- C. The following procedures will be utilized for receiving complaint information:
 1. Any non-supervisory employee who is contacted by a complainant or receives information regarding a concern, a performance complaint, or an allegation of serious misconduct shall immediately notify their supervisor or, if their supervisor is not available, another Department supervisor.

2. Any supervisor who is contacted by a complainant or receives information regarding a concern, a performance complaint, or an allegation of serious misconduct shall complete an AIM entry or the *Complaint Against Employee Form* (GPD form 320.1-A). Depending on the nature of the alleged action or inaction, the supervisor may ask the complainant and/or any witness(es) to complete a written statement using an *Allegation Statement* form (GPD form 320.1-B).
 3. Completion of the AIM entry or the complaint form will trigger notification of the involved employee's immediate supervisor and chain-of-command as necessary based on the nature of the complaint.
- D. The Chief of Police will be notified in person or by phone immediately via the chain-of-command of any allegation of serious misconduct filed against a Department employee.

320.1.5 - Employee Duty to Report

- A. Any employee of the Garner Police Department that becomes aware of any misconduct that warrants investigation has the duty to report the misconduct to a supervisor.
- B. Failure to report misconduct to a supervisor may subject the employee to punitive disciplinary action.

320.1.6 – Assignment of Investigations to Supervisors (26.2.3; 26.3.1)

- A. Performance complaints can be investigated and resolved by any supervisor within the Department. The Chief of Police and the chain-of-command is notified of performance complaints received from the public via the electronic complaint database. If the supervisor feels it is prudent due to the nature of the complaint, immediate notification shall be made.
 - B. The Chief of Police will assign one member of the command staff to serve as the Department's Internal Affairs Administrator. The Internal Affairs Administrator will normally be assigned to investigate an allegation of serious misconduct. However, the Chief of Police may appoint any member of the command staff to serve as an Internal Affairs Investigator for the Department. During an internal affairs investigation, the assigned Internal Affairs Investigator(s) will report directly to the Chief of Police in matters related to the investigation.
- C. Specific Supervisory Responsibilities by Rank
1. Sergeants - are typically responsible for conducting any internal investigations related to performance complaints alleging inappropriate conduct by police officers or civilian employees in their chain-of-command.
 2. Police Records Manager – is typically responsible for conducting any internal investigations related to performance complaints alleging inappropriate conduct by civilian employees in the Records Manager's chain-of-command.
 3. Lieutenants - are typically responsible for conducting any internal investigations related to performance complaints alleging inappropriate conduct by their assigned employees (direct reports).
 4. Operations Captain – is typically responsible for conducting any internal investigations related to performance complaints alleging inappropriate conduct by lieutenants in their chain-of-command.
 5. Administration Captain – is typically responsible for:
 - a. Conducting any internal investigations related to performance complaints alleging inappropriate conduct by their assigned employees (direct reports).

- b. Conducting internal investigations related to allegations of serious misconduct against any department employee.
- 6. Chief of Police – is typically responsible for conducting any internal investigations related to performance complaints alleging inappropriate conduct by the Administration Captain or Operations Captain.

320.1.7 – Performance Complaint Investigation Procedures (26.3.3; 26.3.4)

- A. If the complaint does not meet the criteria for an allegation of serious misconduct, a supervisor will immediately begin an investigation. Whenever possible, the supervisor conducting the investigation will be of a higher rank than the employee being investigated.
- B. The supervisor conducting the investigation will contact the complainant and provide them with their name and contact information.
- C. The investigating supervisor will establish a schedule for contacting the complainant to provide them with a status report on the investigation. The supervisor will contact the complainant in person or by phone. If the supervisor is unable to make contact, a status report will be mailed to the complainant via first class mail.
- D. All performance complaint investigations will be completed within thirty (30) days of receipt of the complaint unless the nature and complexity of the investigation requires the Chief of Police to issue an extension.
- E. The investigating supervisor will notify the complainant when the investigation is completed.
 - 1. Notification will be made by phone when possible. If the complainant cannot be reached by phone, written notification will be made via first class mail. Any phone contacts made or received will be recorded in the “Notes” section in AIM.
 - 2. The complainant will only be advised that the investigation has been completed and handled in accordance with Department policy. State personnel laws prohibit the release of personnel information to the public.
- F. Upon completion of an investigation, the supervisor will submit a copy of all findings and actions up the chain-of-command for review.
- G. Additional details are available in the Internal Affairs Manual.

320.1.8 – Allegation of Serious Misconduct Investigation Procedures (26.3.3; 26.3.4)

- A. Upon receipt of an allegation of serious misconduct against a Department employee, the completed *Complaint Against Employee Form* (GPD form 320.1-A) will be forwarded to the Internal Affairs Administrator.
- B. The Internal Affairs Administrator will review the form with the Chief of Police who will assign an Internal Affairs Investigator to investigate the allegation.
- C. The Internal Affairs Administrator will notify the complainant in writing that the Department has received the allegation and will identify the Internal Affairs Investigator who is assigned to the investigation.

- D. The assigned Internal Affairs Investigator will periodically contact the complainant and provide them with a status report on the investigation. The assigned investigator will contact the complainant in person or by phone. If the assigned investigator is unable to make personal contact, a status report will be mailed to the complainant via first class mail.
- E. All internal affairs investigations will be completed within thirty (30) days of receipt of the complaint unless the nature and complexity of the investigation requires the Chief of Police to issue an extension.
- F. The Internal Affairs Administrator will notify the complainant when the investigation is completed.
 - 1. Notification will be made via first class mail.
 - 2. The complainant will only be advised that the investigation has been completed and handled in accordance with Department policy. State personnel laws prohibit the release of personnel information to the public.
- G. Upon completion of the investigation, the assigned Internal Affairs Investigator will submit a copy of all findings up the chain-of-command to the Chief of Police and then the Internal Affairs Administrator.
- H. Any information involving a member of the Department gathered as a result of a criminal investigation may be used in any later administrative investigation or other Departmental action.
- I. The Chief of Police may obtain the assistance of the North Carolina State Bureau of Investigation or any other appropriate investigative agency in any internal criminal or administrative investigation.
- J. Additional details are available in the Internal Affairs Manual.

320.1.9 - Employee Rights and Responsibilities During Interviews (26.3.5)

A. Criminal Investigations

- 1. Prior to any interviews about alleged criminal misconduct, the employee under investigation will be advised of the *Miranda* warnings by completing a *Waiver of Adult Miranda Rights* form (GPD form 840.1-A). The provisions of *Miranda* will be followed throughout the interview.
- 2. Employees who are interviewed as witnesses in criminal investigations involving other employees are subject to the guidelines outlined in 320.1.10.B below.

B. Performance Complaint Investigations

- 1. Prior to an interview of an employee under investigation concerning an administrative violation involving a performance complaint, the supervisor conducting the interview shall verbally inform the employee of their rights and responsibilities related to the interview and investigation as listed below. The employee may request this information be provided to them in writing; if this request is made, the supervisor will provide the employee with a *Statement for Internal Investigation and Administrative Purposes* form (GPD form 320.1-E).
- 2. The supervisor will advise the employee of the following:
 - a. The employee will be required to answer all questions fully and truthfully; all questions will be specifically, narrowly, and directly related to the performance of his/her official duties or of detrimental personal conduct;

- b. Refusal to comply with an order to answer such questions or failure to answer questions fully and truthfully will be considered gross personal misconduct and may subject the employee to punitive disciplinary action, up to and including termination; and
- c. In accordance with the *Garrity v. New Jersey* and *Gardner v. Broderick* Supreme Court cases, any statements made during an administrative interview may not be used against the employee in subsequent criminal prosecutions.

C. Allegation of Misconduct Investigations

1. Prior to an interview of an employee under investigation concerning an administrative violation involving an allegation of misconduct, the employee shall be provided with and required to complete a *Statement for Internal Investigation and Administrative Purposes* form (GPD form 320.1-E).
2. The form will advise the employee of the following:
 - a. The employee will be required to answer all questions fully and truthfully; all questions will be specifically, narrowly, and directly related to the performance of his/her official duties or of detrimental personal conduct;
 - b. Refusal to comply with an order to answer such questions or failure to answer questions fully and truthfully will be considered gross personal misconduct and may subject the employee to punitive disciplinary action, up to and including termination; and
 - c. In accordance with the *Garrity v. New Jersey* and *Gardner v. Broderick* Supreme Court cases, any statements made during an administrative interview may not be used against the employee in subsequent criminal prosecutions.

D. General Investigative Guidelines

1. Before any interview in a performance complaint investigation, the supervisor conducting the interview will verbally inform the employee under investigation of the nature and details of the complaint and their specific rights and responsibilities. The employee may request this information be provided to them in writing; if this request is made, the supervisor will provide the employee with a completed *Notice of Internal Affairs Complaint* form (GPD form 320.1-C).
2. Before any interview in an allegation of misconduct investigation or a special examination in any administrative investigation, the employee under investigation will be provided with a completed *Notice of Internal Affairs Complaint* form (GPD form 320.1-C).
 - a. The form will provide the employee with a copy of the allegation(s) and a list of their specific rights and responsibilities during interviews and investigations.
 - b. The Chief of Police may choose not to inform an employee that he/she is under investigation if the notice is likely to jeopardize the investigation.
2. All interviews will be held during the employee's regular work hours unless the seriousness of the accusation or other aggravating factors justifies an immediate interview.
3. Employees under investigation will not be subjected to offensive language, threatened with dismissal or other disciplinary action, or be made promises by any supervisor or the assigned Internal Affairs Investigator.
4. Administrative investigation interviews concerning allegations of serious misconduct and all criminal investigation interviews will be audio recorded unless a complainant or witness refuses to be recorded. Interviews regarding performance complaints are not required to be audio recorded,

but may be audio recorded at the supervisor's discretion. There is no requirement to video record any internal investigation interview; however, the supervisor may elect to video record an interview at their discretion.

5. Employees subject to internal investigation may contact the assigned Internal Affairs Investigator to find out the status of the investigation.
6. Employees will not be permitted to review any portion of an internal investigative file while the investigation is being conducted.
7. Employees are prohibited from contacting any complainant in a criminal or administrative investigation. This is not intended to restrict employees under investigation from contacting another department employee on a work issue not related to the investigation.

320.1.10 – Concurrent Criminal and Administrative Investigations

- A. If an allegation of misconduct alleges an act or acts that constitute both an administrative policy violation and a criminal violation, two separate investigations will be conducted.
- B. The Chief of Police will be responsible for the following:
 1. Determining if the criminal investigation will be conducted by Departmental personnel or by another appropriate investigative agency (typically the State Bureau of Investigation);
 2. Determining if the two investigations will be conducted concurrently (but separately) or if the criminal investigation will take precedence with the administrative investigation to follow after;
 3. If necessary, assigning separate internal affairs investigators to the two investigations (if the criminal investigation is investigated internally); and
 4. Notifying the involved employee(s) of the above decisions.

320.1.11 - Counsel at Internal Investigation Interviews

- A. Employees may request the presence of counsel if they are subject to a criminal investigative interview.
- B. Employees are not permitted to have counsel or other representatives present during administrative interviews or special examinations.

320.1.12 - Special Examinations (26.3.6)

- A. An employee subject to an internal administrative investigation may be ordered, upon approval of the Chief of Police, to undergo certain special examinations at the Department's expense to include:
 1. CVSA, polygraph, or other truth verification examination;
 2. Medical or laboratory examinations to include, but not be limited to: breath or blood chemical analysis, DNA sampling, urine testing, and psychological evaluations;
 3. Photographs may be taken and the employee may be directed to participate in a photographic and/or physical line up;
 4. Submission of financial disclosure statements when they are material to a particular investigation; and

5. Any other non-testimonial procedures judged appropriate by the Chief of Police.
- B. When there is reasonable suspicion to believe an employee has used a prohibited drug or alcohol in violation of the Town's Drug and Alcohol-Free Work Place Policy, a supervisor may order the employee to immediately undergo drug or alcohol testing in accordance with that the Town's policy.
- C. Refusal to submit to any ordered examination will be considered gross personal misconduct and may subject the employee to punitive disciplinary action, up to and including termination.

320.1.13 – Access to Confidential Employee Information

- A. During the course of an internal investigation, the assigned supervisor or Internal Affairs Investigator may determine that there are medical records or other related information not in the custody of the Department that may aid the investigation.
- B. When this determination is made, the involved employee should be asked to consent to have the identified records released. The employee shall indicate their consent by signing a *Consent to Release Medical Information* form (GPD form 320.1-F). If the employee refuses consent, the assigned supervisor or Internal Affairs Investigator shall determine if it is necessary and/or appropriate to seek a court order to obtain the records.

320.1.14 - Conclusion of Fact (26.3.8)

- A. Upon the conclusion of each internal investigation, the assigned Internal Affairs Investigator will assign one of the following dispositions to each complaint or allegation addressed by the investigation:
 1. Exonerated: The incident occurred as alleged but was lawful and proper;
 2. Not Sustained: There is insufficient evidence to either prove or disprove the allegation;
 3. Policy Failure: The allegation occurred as alleged but the action(s) taken by the employee(s) was within policy. The policy should be reviewed to ensure it is consistent with current Town and Department philosophy.
 4. Sustained: There is evidence sufficient to prove the allegation; or
 5. Unfounded: The allegation is found to be false or not factual.
- B. In a performance complaint investigation, the investigating supervisor will make a determination as to any appropriate discipline and will assign discipline so long as it is not punitive disciplinary action (see policy 320.02 – *Disciplinary System*). If disciplinary action is deemed appropriate, the investigating supervisor will forward their recommendation to the employee's Division Commander. The Division Commander will review the investigation as outlined below.
- C. In an allegation of serious misconduct investigation, the assigned Internal Affairs Investigator will submit their investigative summary and findings to the accused employee's Division Commander. The Division Commander will review the findings and will determine whether or not punitive disciplinary action is warranted.
 1. If punitive disciplinary action is not warranted, the Division Commander will assign any appropriate discipline.
 2. If punitive disciplinary action is warranted, the investigation will be forwarded to the Operations Captain who will review the summary and findings and will make a recommendation for punitive disciplinary action if deemed appropriate (see policy 320.02 – *Disciplinary System*).

320.1.15 - Inspection of Departmental Property

- A. Property belonging to the Garner Police Department is subject to inspection when there is reasonable suspicion to believe that evidence of work-related misconduct will be found. Property includes, but is not limited to, computers, desks, file cabinets, phones, storage lockers, and vehicles.
- B. Department employees have no reasonable expectation of privacy in any of the aforementioned property resulting from their employment or their status as a police officer.

320.1.16 – Emergency Relief from Duty, Modified Duty and Non-Disciplinary Suspension (26.3.7)

- A. Any supervisor may relieve an employee from duty, on an emergency basis, when it is judged to be in the best interests of the Department and/or the employee. Any supervisor placing an employee on emergency relief from duty will provide the employee with a *Notice of Emergency Relief from Duty* form (GPD form 320.1-D).
- B. The emergency relief from duty will remain in effect until the Chief of Police has reviewed the circumstances of the relief. Employees placed on emergency relief from duty shall turn in their department-issued credentials (badge and identification card), portable radio, vehicle, and Department-issued weapons. Any employee placed on emergency relief from duty shall be on paid leave.
 - 1. The Chief of Police will review the circumstances resulting in the emergency relief from duty and may elect to return the employee to duty, may place the employee on modified duty, or may (after consultation with the Town Human Resources Director) elect to have the employee be placed on non-disciplinary suspension pending the outcome of the investigation. This determination will be made pursuant to the Town of Garner Personnel Policies and Procedures Manual and GPD directive 310.14 – *Temporary Duty Assignments*.
 - 2. Employees placed on modified duty will be temporarily re-assigned to the Office of the Chief of Police. Employees on modified duty will be assigned non-law enforcement duties with the Department.
- C. During periods of emergency relief from duty, modified duty, or non-disciplinary suspension, the employee shall have no law enforcement authority and shall not act in the capacity of a Garner Police Officer (other than to testify in court) or engage in extra-duty secondary law enforcement employment.

320.1.17 - Records Maintenance (26.2.2)

- A. A copy of all completed internal investigations will be submitted to the Internal Affairs Administrator in order to assist the Internal Affairs Administrator with identifying training issues and in completing the annual summary and analysis of complaints.
- B. A secure central file will be maintained to house all records related to complaints and investigations. This file will be maintained in conformity to State personnel laws to ensure confidentiality of such records. Files which are stored electronically will be secured by only allowing those with authority to access them. Those with authority to access the records will only have viewing capability.

320.1.18 - Annual Public Reporting of Complaints (26.2.5)

The Internal Affairs Administrator will review all inquiries and investigations and prepare an annual (calendar year) analysis which shall be submitted to the Chief of Police. The Chief of Police will make the annual statistical summary of complaints available for review by Departmental personnel, Town management, local elected officials, the local news media, and any interested members of the public upon request.