



**Government of the United States Virgin Islands  
Virgin Islands Police Department**



# Policy and Procedure Manual

<b>Series</b> DP	<b>Effective Date</b> Aug 2, 2011	<b>Review Date</b> Annually	<b>Policy Number</b>  7.3
<b>Subject</b> Investigating Misconduct and Citizen Complaint Policy			
<b>Chapter 7 – Disciplinary Procedures</b>		<input checked="" type="checkbox"/> <b>New Policy</b>  <input type="checkbox"/> <b>Replaces-</b>	
<b>References</b>			

## I. PURPOSE

The purpose of this policy is to provide all Virgin Islands Police Department ("VIPD" or "Department") employees, and the public, the procedures for processing and investigating allegations of officer misconduct or citizen complaints. VIPD Officers and employees are expected to maintain the highest standards of conduct. Officers shall conduct themselves properly and professionally, on or off duty. The purpose of this policy is to establish responsibilities and procedures for conducting investigations of misconduct and serious misconduct (administrative and/or criminal) that may result in disciplinary action and/or criminal prosecution.

## II. POLICY

The VIPD's public image is determined by a professional response to allegations of misconduct against its employees. The establishment of procedures for the investigation of complaints is crucial to demonstrate and protect the VIPD's integrity. This Department shall accept and fairly and impartially investigate all complaints or allegations of misconduct to determine their validity, and to timely impose any disciplinary or non-disciplinary corrective actions that may be warranted. It is VIPD's policy to investigate every instance of alleged misconduct against a member of this Department, whether criminal or administrative in nature, in accordance with federal or local laws, and VIPD policies and procedures.

## III. DEFINITIONS

*Complaint:* Any allegation by an individual regarding VIPD services, policies, practices or procedures, claims for damages which allege Officer misconduct, or Officer misconduct; and any allegation of possible misconduct made by a VIPD

officer.

Complainant: Any person who files a complaint regarding the conduct of any Department employee, or the VIPD's policies, procedures, or action.

Complaint Control Number: A sequential number used to identify and track citizen complaint investigations.

Class 1 Complaints: Allegations that have the potential to damage the reputation of the Department or its personnel, and generally include, but are not limited to, allegations of serious misconduct, serious violations of Standards of Conduct and other written directives, or criminal conduct.

Class 2 Complaints: Allegations that generally include, but are not limited to, allegations of a non-serious nature and violations of Standards of Conduct and other written directives of a non-serious nature.

Class 3 Complaints: Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.

Class 4 Complaints: Minor Service complaints by a citizen who contacts the Department questioning, or informally complaining, about a policy, procedure, or tactic used by the Department or an employee.

Critical Firearm Discharge: A discharge of a firearm by a VIPD officer, but does not include range and training discharges and discharges at animals.

Discipline: A written reprimand, suspension, demotion, or dismissal.

Employee: Any person employed by the VIPD, whether sworn or non-sworn, part-time or full-time.

External Complaint: A complaint that originates from outside the department.

Internal Complaint: A complaint that originates from within the VIPD. Such complaints may be initiated by other VIPD employees or from supervisors who observed, or were informed by other employees, of possible policy violations.

Internal Affairs Bureau (IAB): The designated Bureau with primary responsibility for conducting investigations of Administrative or Citizen Complaints of Misconduct.

Misconduct: Any conduct by a VIPD employee that violates VIPD policy or the law

Officers: Any law enforcement officer employed by or assigned to the VIPD, whether on or off duty, including supervisors and members authorized to carry department issued weapons, and members of the Police Auxiliary Force.

Preponderance of the Evidence Standard: The quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula. A preponderance of evidence has been described as just enough evidence, no matter how slight, to make it more likely than not that the allegation sought to be proved is true or false.

Serious Misconduct: Suspected criminal misconduct and the specific forms of misconduct identified in section D listed below. Such conduct shall be investigated by the IAB unit and the Criminal Investigation Division of the Attorney General's Office.

Serious Use of Force: Any action by an officer that involves: 1) the use of deadly force, including all critical firearm discharges; 2) a use of force in which the person suffers serious bodily injury, or requires hospital admission; 3) a canine bite; and 4) the use of chemical spray or Electronic Control Weapon against a restrained person.

Summary Action: Disciplinary action (oral reprimand or counseling documented in writing) taken by an Officer's supervisor or commander for minor violations of department rules, policies, or procedures as defined by this department. Summary actions are the lowest level of disciplinary action generally handled by first line supervisors.

Supervisor: Includes those holding the rank of Corporal, Sergeant, Lieutenant, Captain, Deputy Chief, Chief, Assistant Commissioner, Commissioner, or anyone acting in those capacities, any other sworn or non-sworn manager authorized to carry department issued weapon(s), or any other individual authorized by the Commissioner.

Use of Force incidents indicating Potential Criminal Liability: Includes, but is not limited to, all strikes, blow, kicks, or other similar uses of force against a handcuffed subject, and all accusations or complaints of excessive force.

## **IV. PROCEDURES**

### **A. Investigations of Citizens Complaints**

#### **1. General**

- a. All investigations shall, to the extent reasonably possible, determine whether the officer's conduct was justified. No investigation being conducted by either IAB or a Criminal Investigation Unit shall be closed simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury;

- b. All investigations shall be conducted by a supervisor who did not authorize, witness, or participate in the incident, and all investigations shall contain:
  1. Documentation of the name and badge number of all officers involved in, or on the scene during, the incident, and a canvass of the scene to identify civilian witnesses;
  2. Thorough and complete interviews of all witnesses, subject to the VIPD's Garrity Protocol, and an effort to resolve material inconsistencies between witness statements;
  3. Photographs of the subject(s) and officer(s) injuries or alleged injuries; and
  4. Documentation of any medical care provided.

**B. Role of Internal Affairs Bureau**

1. Upon AIB's receipt of the Complaint Form, the complaint will be reviewed and classified in its proper category for assignment. Categories are identified in section C below.
2. The Director of IAB or his designee shall evaluate complaints of criminal conduct made against VIPD employees, and report findings to the Commissioner. The Commissioner shall assign the matter to the appropriate criminal investigation section, the Attorney General's Office, The United States Attorney's Office, or other applicable law enforcement agency authorized to investigate criminal conduct or civil rights violations. Consistent with the provisions of Garrity a parallel Internal Affairs Investigation will be conducted for all criminal misconduct allegations but may be delayed until the resolution of the criminal investigation. The results of a criminal prosecution will not be the basis for taking or not taking disciplinary action against an Officer when the preponderance of evidence indicates the Officer engaged in misconduct.
3. The Commissioner of Police will be notified immediately following receipt of any class 1 allegation or complaint by the Director of IAB, the Chief of Police, or their designees.
4. Allegations identified as class 2, 3 or 4 that are non-criminal can be assigned by the Director of IAB to the Zone where the employee works for investigation. These include:

- a. Minor violations of the Rules and Procedures (i.e. violations which could result in counselling, written and/or oral reprimand(s)), or violations which could potentially result in suspension from duty (without pay) for up to five (5) days; or
  - b. Other unsatisfactory performance incidents.
5. If the complaint is returned to the employee's Zone for investigation, the IAB shall monitor the progress of the investigation and provide guidance as needed. Upon receipt of the Zone's Internal Affairs Investigation Report, the IAB shall review the report and either:
  1. Return the report to the zone for further investigation;
  2. Accept the report, but perform additional follow-up as needed;
  3. Accept the report and present its findings to the Commissioner;  
or
  4. Accept and file the report with no further action (Class 3 and 4 only).
5. Upon completion of the Internal Affairs Investigation Report, the report and all supporting documents shall be forwarded to the Commissioner of Police, or designee, for review. The Commissioner may accept the report as completed or return the report for further investigation.
6. IAB shall have the following additional responsibilities:
  - a. Maintain a complaint log both documentary and electronically (*i.e.* IAPRO);
  - b. Maintain a central file for complaints in a secured area, and in conformity with records retention requirements of local law;
  - c. Conduct a regular audit of complaints to ascertain the need for changes in training or policy;
  - d. Maintain statistical and related information to identify trends involving all complaints of use of force, officer misconduct, and/or abuse of authority;
  - e. Track complaints against individual employees to assist in employee risk analysis and the Early Intervention Program (EIP);
  - f. Provide the Police Commissioner, managers, and/or supervisors with quarterly summaries of complaints and final dispositions against Officers; and

- g. Retrieve complaints from the complaint drop-box on a daily basis during regular business hours.
- h.

### C. Complaint Categories

The following chart depicts the types of complaints, which are defined by the seriousness of the allegation, along with whom the complaint is generally investigated and reviewed by:

TYPES	DESCRIPTION	EXAMPLES	GENERALLY HANDLED BY
<b>CLASS 1</b>	Allegations that have the potential to damage the reputation of the Department or its personnel, and generally include, but are not limited to, allegations of serious misconduct, serious violations of Standards of Conduct and other written directives, or criminal conduct.	<ul style="list-style-type: none"> <li>• Excessive and/or improper use of force</li> <li>• Brutality</li> <li>• False arrest</li> <li>• Unlawful search and/or seizure</li> <li>• Corruption</li> <li>• Dishonesty and untruthfulness</li> <li>• Gross insubordination</li> <li>• Violation of civil rights</li> <li>• Bias-based profiling</li> <li>• Sexual harassment</li> <li>• Workplace violence</li> <li>• Violation of criminal statutes</li> </ul>	<b>THE INTERNAL AFFAIRS UNIT</b>  Formal and Documented with Written Statements and Tape/Video Recorded Interviews  <b>CRIMINAL INVESTIGATION DIVISION</b>
<b>CLASS 2</b>	Allegations that generally include, but are not limited to, allegations of a non-serious nature and violations of Standards of Conduct and other written directives of a non-serious nature.	<ul style="list-style-type: none"> <li>• Violation of policies, procedures or rules, other than those which constitute a Class 1 Allegation</li> <li>• Inappropriate conduct and/or behavior of a less-serious nature, such as rudeness, discourtesy, and offensive language</li> <li>• Violation of VI personnel rules</li> </ul>	<b>FIRST-LINE SUPERVISOR AND/OR INTERNAL AFFAIRS UNIT</b>  Formal and Documented with Written Statements
<b>CLASS 3</b>	Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.	When a citizen complains about the behavior of an employee, such as rudeness or demeanor, but does not wish to file an official formal complaint.	<b>FIRST-LINE SUPERVISOR</b>  Formal and Documented with Written Statements
<b>CLASS 4</b>	Minor complaints by a citizen who contacts the Department questioning or informally complaining about a policy, procedure, or tactic used by the Department or an employee.	When a citizen questions or complains about the <i>procedures or tactics</i> used by the Department or employee, such as on-scene command presence, or why handcuffs were used when detaining a subject, but does not wish to file an official formal complaint.	<b>FIRST-LINE SUPERVISOR</b>  Formal and Documented with Written Statements

### D. Serious Misconduct

Serious Misconduct is understood by the VIPD to mean suspected criminal misconduct and the following misconduct:

1. All civil suits alleging any misconduct by an Officer while acting in an official capacity;
2. All civil suits against an Officer for off-duty conduct (while not acting in an official capacity) alleging physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
3. All criminal arrests or filing of criminal charges against an Officer;
4. All allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;
5. All allegations of an unlawful search and seizure;
6. All allegations of false arrests or filing of false charges;
7. Any act of retaliation or retribution against an Officer or person;
8. Any act of retaliation or retribution against a person for filing a complaint against a member;
9. All allegations of excessive use of force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose);
10. Any failure to complete use of force reports required by VIPD policies and procedures;
11. The providing of false or incomplete information during the course of a VIPD investigation, or in any report, log, or similar document;
12. All incidents in which: (1) a person is charged by an Officer with assault on a police Officer or resisting arrest or disorderly conduct, and (2) the United States Attorney's Office (USAO) or the Virgin Islands Attorney General's Office (AG) notifies VIPD that it is dismissing the charge based upon Officer credibility, or a judge dismissed the charge based upon Officer credibility; or
13. All incidents in which VIPD has received written notification from a the USAO or the AG in a criminal case that there has been: (1) an order

suppressing evidence because of any constitutional violation involving potential misconduct by a VIPD Officer, or (2) any other judicial finding of Officer misconduct made in the course of a judicial proceeding, or any request by a federal judge, local judge, or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. VIPD shall request that all such entities provide them with written notification whenever it has been determined that any of the above has occurred.

**E. Investigation of Public Complaints: Supervisor's Role/Responsibility**

1. The supervisor assigned to investigate a citizen complaint shall ensure the following protocols are applied in all investigations:
  - a. Every complaint must be investigated and evaluated based on the Preponderance of Evidence standard.
  - b. Any supervisor who is the subject of a complaint, or who authorized the conduct that led to the complaint, is explicitly prohibited from investigating said incident.
  - c. Supervisors shall ensure that all officers who use force, or are involved in the use of force, shall submit a written statement regarding the incident, using the Reporting Use of Force form. The investigating supervisor will obtain statements from officers who witnessed a use of force.
  - d. During the investigation of a citizen complaint, all relevant evidence including circumstantial, direct, and physical will be considered, and credibility determinations made, if feasible. Officer's statements will not be given any automatic preference over a Citizen's statement, nor will a witness' statement be disregarded on account that the witness is connected to the complainant. Every effort will be made to resolve material inconsistencies or discrepancies between witness statements and other collected evidence.
  - e. All relevant police activity, including each use of force (i.e. not just the type of force complained about) will continue to be investigated. The investigation will also evaluate any searches and seizures that occurred during the incident. The Supervisor will not close an investigation because the complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of injury, or the complainant will not provide additional medical statements or written statements.



- f. The Supervisor will consider whether any rule, policy, or procedure of the VIPD was violated.
  - g. Conduct an investigation in accordance with the procedures outlined in this policy.
2. At the conclusion of the investigation the supervisor shall prepare an investigative report in accordance with the requirements outlined in this policy.

**F. Time Limits on Completing Internal Affairs Investigations**

1. Generally, the Department should strive to complete internal investigations as soon as practical. In cases of formal investigations, it may be possible to complete such an investigation within a few days or a calendar week. Once assigned, administrative investigations by a supervisor should be completed and forwarded to the Internal Affairs Officer for review within ten (10) days.
2. Administrative investigations conducted by the IAB shall be a priority for the Department, and should be expeditiously investigated and reviewed. These investigations should be completed and forwarded to the Commissioner of Police for review within thirty (30) days. The Commissioner of Police may waive the 30-day requirement for complex investigations and investigations involving extenuating circumstances. The Internal Affairs Investigator assigned to such investigations will keep the Director of IAB informed of its progress and status at least every 10 days, or as required.
3. Time limits governing disciplinary action which may arise from internal investigations for police officers and civilian employees shall comply with any applicable State or Federal statutes, VI Ordinances, and provisions of the respective labor agreements for sworn and non-sworn employees.
4. Supervisors shall be held accountable for the quality of their investigations. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough investigation, neglects to recommend appropriate corrective action, or neglects to implement appropriate corrective action.
5. Zone Commanders will ensure that the completed investigations, including the completed investigative reports, are forwarded to IAB within thirty (30) days of receipt of the complaint.
6. Commanders will ensure that the supervisor's preliminary investigation identifies grounds that may support disciplinary action; and that the

supervisor shall take the appropriate action, including preparing the applicable charges in accordance the procedures for administering disciplinary action, and immediately notifying IAB of the action taken.

7. Upon notification to the subject employee's supervisor and/or commander, IAB may assume concurrent or sole authority for the investigation at any point in the investigation.

#### **G. Notifying Complainant Regarding Status of Complaint Investigation**

1. Upon receipt of a complaint, the supervisor or Internal Affairs Agent shall provide a copy of the Complaint Form to the complainant, acknowledging its receipt. For formal investigations, the IAB will also send a letter to the complainant (if known) under the signature of the Investigating Agent, acknowledging its receipt. In some cases, this may be accomplished in person and/or via telephone. A written letter, however, should still be sent to the complainant for additional verification of receipt of the complaint.
2. The assigned investigator of an internal affairs case is responsible for providing periodic status reports to complainants on all pending internal investigations. Generally, internal investigators should maintain periodic contact with their complainants and provide them status reports on the investigation, as far as practical. Such contact can be accomplished by telephone or email, in lieu of a written letter.
3. For formal or informal investigations, the reporting party shall be notified as indicated below, by the Commissioner of Police or designee, informing him/her of the results of the Department's investigation. Such notification should normally occur within ten (10) days after the conclusion of the investigation and the determination by the Commissioner of Police of the "Finding of Facts."

#### **H. Investigative Interviews and Procedures of Officers**

1. Prior to being interviewed, the Officer against whom a complaint has been made shall be advised of the nature of the complaint.
2. All interviews will be conducted while the Officer is on duty, unless the seriousness of the investigation or other justifiable reason is such that an immediate interview is required. (*refer to applicable CBA*)
3. During interviews there will be designated one primary interviewer. (i.e. one IA Agent or First-line Supervisor, etc..)

4. The complete interview shall be electronically recorded. The recording will note the time at which breaks are taken in the interview process, who requested the break, and the time at which the interview resumed.
5. The Officer shall be provided with the name, rank, and command of all persons present during the questioning.
6. Subject to the approval of an IAB supervisor, Officers will be administered the applicable Warnings prior to interview:
  - a. Garrity Warnings: For compelled statements if the inquiry is administrative. (The administering of Garrity is only authorized by the Director or Assistant Director of IAB.)
  - b. Miranda Warnings: Where the inquiry is criminal and the officer is under arrest or in custody.
  - c. Voluntary Statement Warning: When a voluntary statement is sought and the employee is not in custody; the answers would be admissible in a criminal prosecution and in administrative disciplinary proceedings.
7. Officers may have Union representation during the Internal Interview.
  - a. Officers, under internal (administrative) review, may have present a union representative with them during any administrative internal investigative interrogation so long as the representative is not involved in any manner (*i.e. a witness or subject of the complaint*) with the incident under investigation, or a conflict of interest does not exist. (*Note: refer to applicable CBA*)
  - b. The representative's role is primarily that of an observer and shall not be permitted to interrupt the interview except for the purpose of advising and/or conferring with the officer who is concerned about a contractual right.
  - c. In criminal investigations the employee has the right to talk to legal counsel or to have one present during questioning.
8. Examinations and Searches
  - a. The department may direct that the Officer undergo an intoximeter, blood, urine, psychological, polygraph, medical examination, or any other exam not prohibited by law, if it is believed that such an examination is pertinent to the investigation, so long as they do not violate law, or any CBA.

- b. An on-duty supervisor may direct an Officer to submit to a breath, blood, or urine test when there is reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct, and is required to submit to such tests as the result of either being involved in a traffic accident with a department vehicle or involved in a discharge of a firearm on or off-duty.
- c. An Officer may be required to participate in a lineup if it is used solely for administrative purposes. This does not in any way affect the requirements of a legal order to participate.
- d. Desks, lockers, storage space, rooms, offices, equipment, information systems, work areas, and vehicles are the property of the Government of the VI and are subject to inspection. They may also be searched to retrieve government owned property, or to discover evidence of work related misconduct, if there is reason to suspect (*reasonable suspicion*) such evidence is contained therein.
- e. Private property can be stored in areas mentioned above; however, employees will not expect privacy in those areas. Only those employees who are acting in their official capacity may be authorized to search or inspect areas assigned to other employees.

#### **I. Disposition and Adjudication of Complaints**

1. All investigations into citizen complaint allegations of misconduct require review and disposition by the officer's chain of command and IAB.
2. All citizen complaint allegations of officer misconduct will be fully investigated and documented.
3. All allegations and completed investigations will be recorded and stored in the Internal Affairs Case Management System (IAPRO). IAPRO is a secure software application where the investigations can only be accessed by IAB. Alerts indicating the frequency of complaints against an officer will be generated by IAPRO and only the officer, his chain of command, and IAB will have access to the information. Any paper copies of complaints and investigations will be stored and maintained in the secured storage area in the IAB Office.
4. Summary actions may be taken by Supervisory Personnel for minor violations of rules, policies, or procedures, upon approval of such action by the Zone Commander, or Division or Bureau head.
5. All summary actions shall be documented and copies and disposition(s) provided to the subject officer. Copies may, where appropriate, be for-

warded to subsequent units of assignment, including IAB, and incorporated in the employee's performance evaluation.

6. Once the investigation is deemed complete, the primary investigative authority for the investigation (*i.e.*, *subject Officer's supervisor, Commander, or IAB*) shall review the complaint report and investigative findings. This authority will compile a report of findings and provide a disposition for each allegation as follows:
  - a. **Sustained:** where the investigation determines, by preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;
  - b. **Not sustained:** where the investigation determines, by preponderance of the evidence, that there is insufficient fact(s) to decide whether the alleged misconduct occurred;
  - c. **Exonerated:** where the investigation determines, by preponderance of the evidence, that the alleged conduct did occur but did not violate VIPD policies, procedures, or training; or
  - d. **Unfounded:** where the investigation determines, by preponderance of the evidence, that there are no facts to support that the incident complained of actually occurred.
7. Investigative findings shall also include whether: (i) the Police action complied with policy, training, and legal standards regardless of whether the complainant suffered harm; (ii) the incident involved misconduct by any officer; (iii) the use of different tactics should or could have been employed; (iv) the incident indicates a need for additional training, counsel, or other non-disciplinary corrective measures; and (v) the incident suggests that the VIPD should revise its policies, training, and tactics.
8. Disciplinary action shall be administered in accordance with Department policy and the applicable CBA.
9. Following final disposition of the complaint, a letter shall be sent to the complainant, addressed from the Commissioner or his/her designee, explaining the final disposition.
10. Whenever reasonably possible, the investigation of complaints should be completed within fifty (50) days (*as per CBA*) from the time the department knew, or should have known, about the alleged violation; unless a stay is

granted by the Commissioner or Chief of Police, or another time frame is required by departmental policy, law, or applicable CBA.

11. Final Disciplinary Authority is vested in the Police Commissioner.
12. In cases where there exists probable cause to believe that a fraudulent complaint was logged (*officially documented*) in violation of Virgin Islands law, the case may be referred to the Attorney General's Office for a prosecutorial determination.

#### **J. IAB Records and Confidentiality**

1. IAB SHALL be informed of all final disciplinary decisions.
2. IAB SHALL forward a copy of all final disciplinary decisions to the department's personnel authority.
3. IAB case files and information shall be maintained separately from personnel records.
4. IAB information is considered confidential and will be retained under secured conditions within IAB.
  - a. IAB case files and personnel dispositions may not be released to any source without prior approval of the Commissioner, unless otherwise provided by law.
  - b. Case investigation files shall be retained for a period of time as defined by law, CBA, or the Commissioner.

#### **V. TRAINING**

The Department will continue to provide training to all officers on the citizen complaint process and the appropriate responses in handling citizen complaints, as developed and administered by the Training Director.

Training shall focus on Investigating Citizen Complaints including:

1. factors to consider when evaluating complainant or witness credibility;
2. examination and interrogation of accused officers and other witnesses;
3. identifying misconduct even if not specifically named in a complaint; and
4. using the preponderance of evidence standard as the burden of proof.

  
Novelle E. Francis, Jr.  
Police Commissioner