

Police Complaint Procedures Review 2017

History

Since the late 1980's the Brookline Police Department has had a formal civilian complaint process in place. In 2009 the policy covering the process for investigating and resolving complaints against police officers underwent a significant review and update. This was an extensive process that took several months. A panel of residents made recommendations to revise the policy, open meetings were held, and the panel rewrote the policy. As a result of that review, General Order 34.1, "Process for Police Department Discipline and Selectmen's Review" was implemented effective July 28, 2009. Since that time, citizen complaints filed with the Department have been addressed in accordance with the new policy.

The new policy included a provision for a "periodic assessment" of the complaint process to be conducted. The periodic assessment calls for a biennial review and report on the functioning of the police complaint procedures. The report shall include an assessment of the investigations of civilian complaints, of the Select Board's role in the complaint process, relevant statistics, comparisons with comparable communities, civilian survey results, and recommendations for any changes.

The review is to be conducted by the Police Chief and two civilian Town residents. Once the review is conducted, a report is to be generated and provided to the Select Board, Town Meeting and the public. The first assessment was in 2014 and covered complaints that were registered in 2011, 2012 and 2013. Ruth Ellen Fitch and Doug Louison, members of the original panel that conducted the 2009 overhaul of the Citizen Complaint Policy, Lieutenant Paul Campbell, Internal Affairs Officer (IAO) from the Office of Professional Responsibility, and Police Chief O'Leary collaborated on the 2014 report.

Current Review

This is the second periodic assessment. While the assessment should be completed every two years it was delayed from 2015 to 2017 because of unforeseen circumstances. In 2017, Bobbie Knable and Kelly Race were nominated by Police Chief O'Leary and appointed by the Select Board to complete this review. Bobbie Knable has been a Brookline resident for 52 years. Bobbie is a Town Meeting Member, an Advisory Committee Member, and a member of the MLK, Jr. Celebration Committee. Kelly Race has been a resident of Brookline for 19 years. Kelly is the Chair of the Commission for Diversity, Inclusion, and Community Relations.

The policy states: "The report shall include an assessment of the investigations of civilian complaints, an assessment of the Select Board's role in the complaint process, relevant statistics, comparisons with comparable communities, civilian survey results, and recommendations for any changes". This report does not include comparisons with comparable communities or civilian survey results since data from nearby or similar communities is either not available or is not consistent with the collection methodology in Brookline.

During the time period of this review, there were two National Citizen Surveys conducted covering Brookline, The Community Livability Report in 2014 and 2016. Brookline residents gave a 90% (2014) and a 92% (2016) positive rating to the Police Department which is higher than the national benchmark. For Crime Prevention the ratings were 89% (2014) and 91% (2016). Residents gave positive ratings from 97% to 99 % in the areas of “Overall feeling of safety”, “Safe in neighborhood”, “Safe downtown/commercial area”. All were also higher than the national benchmark. While these results are very good, we do not know the methodology of the survey. The only information we have is that for 2016 “The Community Livability Report provides the opinions of a representative sample of 464 residents of the Town of Brookline”. For 2014 that number is 379 residents. We were disappointed that the survey did not breakdown the responding populations by race or by gender. The only breakdowns are by sexual orientation and by disability. It is impossible to know how representative this survey actually is, or whether responses to individual questions differ among those from different groups (e.g., racial or gender groups).

This report covers all complaints received in 2013, 2014, 2015 and 2016. Bobbie Knable and Kelly Race have reviewed the forty-one (41) complaints filed between 2013 and 2016. All of the complaints were investigated by the Office of Professional Responsibility. Lt. Paul Campbell (IAO) has been in charge of the Office since June of 2011. Lt. Campbell conducted thirty-three (33) of the investigations. Deputy Superintendent Stephen Burke of the Detective Unit and former IAO conducted eight (8) of the investigations. During this review we received full cooperation and support from Lt. Campbell, Deputy Superintendent Burke, and Police Chief O’Leary. We had full access to the hundreds of pages of documentation that comprise the investigation files. All questions and requests for additional information were answered promptly and positively.

Following is the report of our findings.

Summary of Statistics Regarding Police Complaints

Total Civilian Complaints

	2013 - 2016
Complaints filed	41
Total number of allegations	74
Total number of officers included in allegations	48
Number of allegations against un-named officers or BPD generally	2

Allegations by Type

	Number	% of Total
Discourtesy/rudeness	29	39.2%
Improper Procedure	17	23.0%
Racial Profiling	11	14.9%
Retaliation	1	4.1%
General Misconduct	10	13.5%
Conspiracy	2	2.7%
Excessive Force	1	1.4%
Neglect of Duty	2	2.7%
Conduct Unbecoming	1	1.4%
TOTAL	74	100%

Complaint Dispositions

	2013 - 2016	% of Total
Unfounded	30	54.5%
Exonerated	0	0%
Sustained	8	14.5%
Not Sustained	8	14.5%
Mediated	5	9.1%
Filed	4	7.3%
TOTAL	55	100%

Race* of Complainants

	2013 - 2016	% of Total
Black	4	9.1%
Hispanic / Latino	5	11.4%
Asian	3	6.8%
Middle Eastern	3	6.8%
White	28	63.6%
Unknown	1	2.3%
TOTAL	44	100%

*The racial categories are in accordance with State designations.

Number of Police Stops / Recorded Interactions with Civilians

	2013	2014	2015	2016
Total # of calls for service	100,431	95,891	93,553	69,215
Total # of traffic citations	24,799	21,714	19,481	16,298
Total # of arrests	888	756	635	448
Total # of FI/contacts	2,356	2,065	1,672	963
Total # of parking tickets	127,962	129,415	131,470	133,137
Total # of interactions	256,436	249,841	246,811	220,061

Feedback

This was, in many ways, a learning experience. We learned the variety of situations the police encounter and how their training must prepare them first to determine what response is required and then to carry out that response. We were made more clearly aware of the challenges of dealing with mental health incidents and the often adversarial nature of encounters between the police and the public, since even simple traffic stops may result in financial penalties for civilians.

It is our judgment that each complaint was taken seriously, with a thorough investigation of each complaint including detailed interviews with the complainant, officers or other employees involved. We are also in agreement in most cases with the decisions made by the IAO.

Brookline receives an extremely small number of civilian complaints relative to the number of police / civilian interactions and it appears that the numbers continue to decline. While this may be a positive trend, we are concerned that the Police Department may not be getting all the feedback from which it might benefit. We do not necessarily see an increase in complaints as a negative or a decrease as a positive. We would like to be confident that civilians are willing to register complaints. Civilians should be comfortable that their complaints will be investigated without bias, that there is no risk of retaliation, and that the Police Department works constantly to improve and learn from feedback received.

Overall Recommendations

After reviewing the "Process for Police Department Discipline and Selectmen's Review" policy and the practices of the Police Department and the Town in the administration of this policy, we have a variety of recommendations. We are recommending some changes to revise the policy, some changes to modify the procedures, and lastly, minor edits to update the policy but not change its meaning.

Recommendations – Changes to Policy

We have a number of suggested changes to revise the policy. Some of these changes are recommended to make the policy more easily located and used by members of the public. Some changes are suggested to simplify and make the policy easier to read and understand. Others are suggested to ensure that the policy reflects the actual current practice. We have worked with Lt. Campbell and Police Chief O'Leary to make some significant changes to the policy. The revised policy will be submitted to the Select Board for approval. In this section, we outline the most important changes.

We recommend:

1. Changing the title of the "Process for Police Department Discipline and Selectmen's Review" policy to a title that is more descriptive of what it contains. The current title of the policy is misleading;

- a) This policy is not the “process for Police Department discipline”. Officers and employees are disciplined for reasons other than complaints from the public. Discipline is much more likely for on-the-job behavior that is reported by a supervisor or other employee.
- b) Also, only a small section of this policy is about the “Selectman’s review”. This happens only when a complaint decision is appealed, which happens in only a small percentage of complaints.

We propose renaming the policy “Civilian Complaint Process”. This is much more descriptive of the content of the policy and will enable the public to locate this information more easily when searching the Town or Police Department websites.

2. For the reasons set forth in 1a) above, we recommend moving all sections of this policy regarding Police Department Discipline to a separate stand-alone policy. That policy should then be expanded to cover all circumstances under which officers and department employees are disciplined. It would also detail the discipline process and rights of employees. The Police Department should determine whether the discipline policy should be an internal policy rather than a public policy.
3. Ensuring that members of the public who are not fluent in English are able to access the policy, brochure, and complaint form in their primary language.
4. Removing the “Classes of Complaints” and all references to them. We could not determine any positive benefit to labeling a complaint as Class A, B, C, or D. It seems more likely to create an issue for dispute by the complainant if the complaint isn’t labeled “Class A”. We recommend having the Internal Affairs Officer (IAO) determine the nature or type of complaint – regarding an officer or employee’s behavior, regarding a Police Department policy or procedure, or clearly frivolous. It would be of benefit to categorize the complaints against officers or employees by the type of complaint (e.g., Excessive Force, Conduct Unbecoming, Rudeness / Discourtesy) for the purpose of tracking and analysis. In the policy, there is little difference in how Class A and B are handled. The minor difference in Class A complaints seems to be the requirement to send a copy of the complaint the Police Chief who then sends a copy to the Select Board. There is also a requirement for the IAO) to schedule an interview with a complainant within 72 hours. We suggest retaining the higher standard for all complaints deemed by the IAO to be of a serious nature.
5. Allowing complainants the option of submitting complaints to the Chief Diversity Officer (CDO). Complainants should be informed that although the CDO may be involved in the various stages of the investigation, the IAO will lead the investigation.
6. Bringing the CDO in on all cases alleging bias to consult with the IAO and be available to the complainant and witnesses.

7. Adding to the definition of "Not Sustained" – "the results of the investigation are inconclusive" to make it clearer to the complainant.
8. Removing the paragraph on "Lie Detector Tests" under Investigative Techniques since these are not, and should never be used as an investigative tool.
9. Adding the statement "The IAO is responsible for analyzing and identifying trends in complaints from the public and informing the Police Chief. The analysis may lead to the development of additional training, changes to procedures, or other department-wide actions." This will help to ensure that appropriate steps are taken in response to feedback from the public.
10. Adding under the section "Disposition and Notification by the Police Chief" a description of what actions the Police Chief or department may take in the case of a "Sustained" finding (the consequences to the officer or employee). We suggest adding the following paragraph:

"In the case of a "Sustained" finding, the Police Chief, in consultation with the subject employee's supervisor, will determine what actions will be taken to correct the conduct of the subject officer or employee. Possible actions may include: counseling, retraining, additional supervision, reassignment, or discipline up to and including termination of employment. Due to confidentiality requirements regarding employee discipline, complainants will not be informed of the specific discipline administered."
11. Adding under the section "Review by the Town Administrator" the statement "Hold an executive session to determine whether the Select Board will hear the appeal or retain a hearing officer". When an appeal is received, the Select Board needs to read the appeal and as a group agree on the next step. This is already being done but the policy does not recognize or acknowledge this important discussion and decision.
12. Requiring the Select Board to report the Executive Session decision to accept or deny the request to appeal the initial IAO decision to the complainant and subject employee within 5 days.
13. Requiring the Select Board to comply with the steps in the Complaint Policy and the timeframes. If it does not, the Select Board, Town Administrator, or Town Counsel must inform the complainant of the delay, the reason why, and commit to a completion date.
14. Simplifying the language under the section "Actions by the Select Board" with regard to appeals. We recommend removing one incomprehensible paragraph and adding the following actions:

"Uphold the recommended finding(s) of the Police Chief."

“Overturn the recommended finding(s) of the Police Chief.”

15. Retaining one paragraph on Early Intervention Review as a stand-alone section. Move all other sections of the “Early Intervention System” to the new Discipline Policy.
16. Modify the “Notification of Investigation” form to include the name of the subject officer or employee and the date the form was issued.

Recommendations – Changes to Procedures

We have a number of suggested changes to procedures by the Police Department or by other Town employees. While most complaints were investigated and reviewed in a fair, thorough, and impartial manner, we have noted that in a few cases certain actions by the police or others have led to dissatisfaction with the process and criticism by complainants. The intention of these suggestions is to preserve the credibility of the complaint process. We recommend:

1. Editing from the investigative report any offhand comments or remarks of witnesses or police department employees that are not pertinent to the investigation.
2. Excluding from the investigative report any matters prior to or post the subject incident that are not relevant. This includes observations by the Police Department regarding the subsequent behavior of complainants.
3. Avoiding utilizing a complainant’s workplace during the course of an investigation unless at the request of the complainant. For some complainants it may be convenient to have the IAO meet them at their workplace. For others it could be perceived as intimidating.
4. Allowing both parties to participate, either together or separately, in any reenactment of an incident as part of an investigation, as practicable.
5. Compelling the Select Board to fulfill its obligation to hear any appeals in compliance with the policy. In the Citizen Complain Process Review published in April 2014 it stated:

“The complainant’s right of appeal is absolute, and any complainant who wishes to be heard by the Board of Selectmen will be granted such opportunity. After hearing an appeal, the Board of Selectmen have the option of entering discipline, upholding the Chief’s decision, sending the case back for further investigation, or appointing an independent investigator to conduct an investigation on their behalf.”

In our review, we found that not all complainants making appeals to the Select Board were granted the right to be heard by the Select Board or were granted the

opportunity in a timely manner. This right was a key element of the 2009 policy. It is critical to the checks and balances on the Police Department in the complaint process.

6. Updating complainants on an ongoing basis on the progress of their complaint. We appreciate that some cases are complex and may take extended periods of time to complete. We also appreciate that some delays are not controlled by the Town. However, some form of communication should be provided no less than every 30 days, even if there is no progress.
7. Maintaining a record of the dates and method (telephone, email, regular mail) for all attempts to contact the involved parties (i.e. complainant, witnesses, police officer), if not included in the investigative report, then noting in the report that such information is kept and is available on request from the IAO.
8. Entering page numbers in complaint reports.
9. Ensuring the privacy of all complainants. No investigative reports or communications from the Town to a complainant or their representative should include any reference to another civilian's unrelated complaint.
10. Taking additional steps to publicize the complaint policy and request feedback. The Police Department or Town should continue to utilize new technologies to allow civilians to submit complaints on-line or through other electronic systems. We were pleased to learn that the Police Department receives complaints through Twitter, Facebook, and other applications.

Recommendations – Changes to Wording

While there were many minor edits, the following are changes to wording that were made throughout the document to make the policy more accessible, consistent, and easy to understand. We recommend:

1. Changing all references to “citizens” to “civilians” or “the public”. This change makes the policy more inclusive and removes the potential for anyone to misunderstand that the policy only applies to U.S citizens or Brookline residents.
2. Making all wording in the policy gender neutral, including changing the Board of Selectmen to the “Select Board”.
3. Utilizing the term “Police Chief” consistently throughout the policy. Removing all other references such as “Chief” and “Chief of Police”.
4. Consistently using the term “subject officer” or “subject employee” and avoiding potentially sensitive words such as “accused” and “complained against”

Conclusions

Based on our review it is our opinion that the civilian complaint process is operating effectively, and in compliance with the policy. With the implementation of the changes to the wording and content of the policy and to the procedures, we believe the policy will be more accessible to those considering whether to make use of the process.

Respectfully,

Kelly Race
Bobbie Knable