

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement”), effective as of the date it is fully executed (“Effective Date”), is entered into by and among the Massachusetts Bay Transportation Authority, its former, present and/or future employees, including but not limited to Jennifer M. Garvey (“Garvey”), Alfred Trinh (“Trinh”) and Stephen A. Salisbury (“Salisbury”), as well as its agents, contractors, administrators, attorneys, subsidiaries, officers, directors, trustees, affiliates, subdivisions, predecessors, assignors, assignees and successors (collectively, “the MBTA”), and Mary Celeste Holmes (“Holmes”). The MBTA and Holmes are sometimes hereinafter referred to as the “Parties” or individually as a “Party.”

### **RECITALS**

WHEREAS, on or about August 19, 2015, Ms. Holmes filed a civil action in the District of Massachusetts captioned Mary Celeste Holmes v. Jennifer M. Garvey and Alfred Trinh, C.A. 15-CV-13196-GAO, against two MBTA police officers (hereinafter, “the “Lawsuit”) arising from events that took place on March 26, 2014 (hereinafter, “the Incident”);

WHEREAS, Ms. Holmes later added the MBTA and MBTA Police Department officer Lieutenant Stephen A. Salisbury as defendants in the Lawsuit;

WHEREAS, the MBTA, including but not limited to Garvey, Trinh and Salisbury, denies all grounds for liability;

WHEREAS, notwithstanding the allegations and positions of the Parties, the Parties desire to settle all disputes and alleged causes of action that have been or could have been asserted in the Lawsuit;

WHEREAS, to settle all disputes, the MBTA agrees to make certain payments to Ms. Holmes and take other steps as described below;

WHEREAS, Ms. Holmes agrees to settle with prejudice any and all of Ms. Holmes’ current or potential future claims against the MBTA, including but not limited to Garvey, Trinh and Salisbury, based on the Incident or arising from it in any way.

### **TERMS AND PROVISIONS**

Now, therefore, in consideration of the mutual agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the other, and intending to be legally bound hereby, it is hereby stipulated and agreed by the Parties as follows:

**A. Settlement Proceeds.** In settlement of all claims, disputes and differences that Ms. Holmes alleged or could have alleged in the Lawsuit or otherwise based on the Incident or arising from it in any way, including any claim for attorney’s fees, the MBTA agrees as follows:

- (i) to pay Ms. Holmes the total sum of \$57,500 (“Settlement Proceeds”) no

later than 45 days after the receipt by the MBTA of this Agreement, signed by all parties, by sending a check made payable to “Mary Celeste Holmes” by hand or overnight courier to the American Civil Liberties Union Foundation of Massachusetts (the “ACLU”);

(ii) to pay the ACLU the total sum of \$67,500 in legal fees and costs no later than 45 days after the receipt by the MBTA of this Agreement, signed by all parties, by sending a check made payable to “ACLU Foundation of Massachusetts, Inc.” by hand or overnight courier to the ACLU; and

(iii) if either check is sent later than 45 days after the MBTA’s receipt of a fully executed copy of this Agreement, the MBTA shall pay interest on that sum at a prorated amount of 1.5% each month it is past due.

**B. Ms. Holmes’ Agreement Not to Sue the MBTA, Including but not Limited to Garvey, Trinh, and/or Salisbury, for any Claims Related to the Incident.** Ms. Holmes agrees not to bring any claims against and/or sue the MBTA, including but not limited to Garvey, Trinh, and/or Salisbury, based on any claims released by this Agreement, as described herein. Ms. Holmes agrees that this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against any action, suit, arbitration, or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.

**C. Contingency of Agreement.** The MBTA’s payment obligations under this Agreement are contingent in their entirety upon receipt by counsel for the MBTA of this executed Agreement and Ms. Holmes’ adherence to the obligations, representations and warranties in this Agreement.

**D. Release by Ms. Holmes of All Possible Claims Against the MBTA, Including but not Limited to Garvey, Trinh, and Salisbury, that Could have been Alleged in the Lawsuit.** Ms. Holmes hereby fully agrees to release and forever discharge the MBTA, including but not limited to Garvey, Trinh, and Salisbury, from any and all claims, disputes, debts, liabilities, costs, attorneys’ fees, actions, arbitrations, suits at law or equity, demands, expenses, damages, whether general, specific, punitive, exemplary, contractual or extra-contractual, and causes of action of all types, whether known or unknown, foreseen, unforeseen, patent or latent, which Ms. Holmes has or might have against the MBTA, including but not limited to Garvey, Trinh, and/or Salisbury, from the beginning of the world to the date of this Agreement that could have been alleged in the Lawsuit or otherwise arise out of or relate to the Incident (hereinafter, the “Released Claims”). It is the intent of the Parties that, subject to the obligations set forth, created or preserved herein, this Agreement constitutes a release by Ms. Holmes of all claims against the MBTA, including but not limited to Garvey, Trinh, and Salisbury, from any and all claims of any kind, whether or not Ms. Holmes is aware of any such claim, from the beginning of the world to the date of this Agreement that was alleged or that could have been alleged in the Lawsuit or is otherwise based on the Incident or arising from it in any way.

**E. The MBTA’s Agreement to Institute Policy Changes.**

(i) The MBTA agrees to prominently place its Citizen Complaint/Commendation form, which is currently on the MBTA website, in a visible,

accessible place on the MBTA website in a dropdown menu under the “Contact Us” option at the top of the MBTA homepage and to generate a receipt to the sender when a complaint using the Citizen Complaint/Commendation form is submitted electronically.

(ii) The MBTA agrees to make modifications to the MBTA’s Excessive Use of Force Citizen Complaint Policy (attached hereto as Exhibit 1).

(iii) The MBTA also agrees to post on its website, also accessible from a dropdown menu on the MBTA homepage, the following MBTA policies: Excessive Use of Force Citizen Complaint Policy (attached hereto as Exhibit 1); Chapter 171 - Use of Force in Response to Resistance/Aggression (attached hereto as Exhibit 2); Chapter 101 - Standards of Conduct (attached hereto as Exhibit 3); Chapter 120 - Internal Affairs and Citizen Complaints Investigations (attached hereto as Exhibit 4); and MBTA Transit Police Department Table of Organization (attached hereto as Exhibit 5).

**F. Stipulation of Dismissal.** Ms. Holmes agrees to file a Stipulation of Dismissal with Prejudice within three business days of the ACLU receiving the settlement proceeds and payment of legal fees and costs set forth in ¶A(i)-(ii) above.

### **GENERAL PROVISIONS**

**1. Authority.** The Parties represent and warrant that they are fully authorized and empowered to enter into this Agreement on their behalf and to settle, release, change, modify, transfer, grant, bargain and convey in all respects the rights and claims that are the subject of this Agreement and/or that their signatories below have been authorized to execute this Agreement on their behalf.

**2. No Admission of Liability.** Nothing contained in this Agreement shall be deemed an admission of liability by the MBTA, including but not limited to Garvey, Trinh, and Salisbury, of any violation of any applicable law, rule, statute, regulation, order, understanding, agreement, or contract of any kind. Neither this Agreement nor any of the negotiations or proceedings connected with it shall be offered as evidence or received in evidence in any pending or future action or proceeding of any type whatsoever to establish any liability or admission by MBTA, including but not limited to Garvey, Trinh, and Salisbury, all of whom expressly deny any such liability, wrongdoing, or responsibility.

**3. Enforceability and Governing Law.** This Agreement is entered into in the Commonwealth of Massachusetts and this Agreement, and any rights, remedies, or obligations provided for in this Agreement, shall be construed and enforced exclusively in accordance with the laws of the Commonwealth of Massachusetts, without regard to choice of law principles.

**4. Construction.** This Agreement shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity in this Agreement shall not be interpreted against any one Party.

**5. Severability.** The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid,

unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions or parts.

6. **No Rescission on Grounds of Mistake.** The Parties acknowledge that they have made their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set aside any part of this Agreement on the grounds of mistake. Furthermore, the Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in this Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them, or believed by them to be true, and further agree that this Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason thereof.

7. **Amendment.** This Agreement shall not be altered, amended, or modified by oral representation made before or after it is executed. All modifications must be in writing and duly executed by the Parties.

8. **No Assignment.** Ms. Holmes represents and warrants that she is the sole and lawful owner of all right, title and interest in and to every claim and other matter released in this Agreement and that she has not previously assigned or transferred, or purported to do so, to any person or entity any right, title or interest in any such claim or other matter. In the event that such representation is false, and any such claim or matter is asserted by anyone who is the assignee or transferee of such a claim or matter, then Ms. Holmes shall be obligated to fully indemnify, defend and hold harmless the MBTA, including but not limited to Garvey, Trinh and/or Salisbury, against whom such claim or matter is asserted, including but not limited to legal fees and expenses.

9. **Advice of Counsel.** The Parties acknowledge that this Agreement is executed voluntarily by each of them without any duress or undue influence on the part of or on behalf of any of them. The Parties further acknowledge that they have or had the opportunity for representation in the negotiations for this Agreement by counsel of their choice and that they have read this Agreement, have had it fully explained to them by their counsel and that they are fully aware of the contents of this Agreement and its legal effect.

10. **Full and Final Agreement.** This Agreement constitutes the full and final agreement of this settlement between the Parties. There are no representations, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter contained in this Agreement that are not fully expressed herein. No course of prior dealing between the Parties, no usage of the trade, and no parol or extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term used herein. Each Party represents and warrants that they are not relying on any other Party for tax or bankruptcy advice.

11. **Binding Effect.** This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, dependents, beneficiaries, trustees, executors,

administrators, agents, attorneys, representatives, successors, assignors, and assignees.

**12. No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement is not intended to benefit any person not a Party hereto and the rights and remedies provided herein shall only be enforceable by a Party or person granted such rights hereunder.

**13. No Waiver.** No failure to exercise and no delay in exercising any right, power, or remedy hereunder shall impair any right, power, or remedy which any Party may have, nor shall any such delay be construed to be a waiver of any such right, power, or remedy, or any acquiescence in any breach or default hereunder, nor shall any waiver of any breach or default of any Party hereunder be deemed a waiver of any default or breach subsequently occurring. All rights and remedies granted to any Party hereunder shall remain in full force and effect notwithstanding any single or partial exercise of, or any discontinuance of, any action begun to enforce any such right or remedy. The rights and remedies specified herein are cumulative and not exclusive of each other or of any rights or remedies which any Party would otherwise have. Any waiver, permit, consent or approval by any Party of any breach or default hereunder must be in writing and shall be effective only to the extent set forth in such writing signed by the Party to be charged and only as to that specific instance.

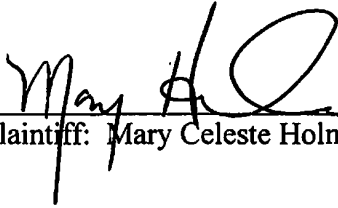
**14. Counterparts/Facsimile and PDF Copies.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Copied, scanned and PDF copies of this Agreement and the signatures hereto may be used with the same force and effect as the original. This Agreement shall be deemed fully executed and effective when all Parties have executed at least one of the counterparts, even though no single counterpart bears all such signatures.

**15. Agreement Not To Challenge.** The Parties agree that neither of the Parties shall in any manner challenge this Agreement. The Parties each agree not to sue or in any way assist or encourage any other person or entity in suing any Party with respect to any claim released herein, except insofar as may be necessary to enforce the terms and provisions of this Agreement. This does not include the action brought by Garvey against the MBTA currently pending before the Massachusetts Commission Against Discrimination (MCAD Docket No. 16BEM01097 / EEOC/HUD Number: 16C-2016-01374) and/or any other administrative or judicial proceedings that are not based on any claims released by this Agreement, as described herein.

**16. Survival.** The representations and warranties set forth herein shall survive the execution of this Agreement and shall continue in full force and effect thereafter until any claim thereon would be barred by applicable statute of limitations.

IN WITNESS WHEREOF, the Parties have read and understand the terms of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the date shown by their signatures below.

Dated: June 5, 2017

  
\_\_\_\_\_  
Plaintiff: Mary Celeste Holmes

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Massachusetts Bay  
Transportation Authority

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Jennifer M. Garvey

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Alfred Trinh

Dated: \_\_\_\_\_, 2017

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Defendant: Stephen A. Salisbury



Dated: \_\_\_\_\_, 2017

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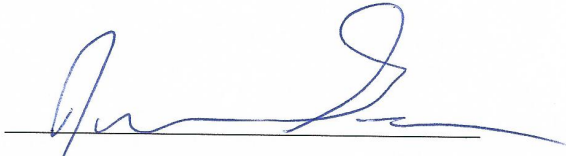
Plaintiff: Mary Celeste Holmes

Dated: \_\_\_\_\_, 2017

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Defendant: Massachusetts Bay  
Transportation Authority

Dated: 6/2, 2017



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Defendant: Jennifer M. Garvey

Dated: \_\_\_\_\_, 2017

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Defendant: Alfred Trinh

Dated: \_\_\_\_\_, 2017

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Defendant: Stephen A. Salisbury



IN WITNESS WHEREOF, the Parties have read and understand the terms of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the date shown by their signatures below.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Plaintiff: Mary Celeste Holmes

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Massachusetts Bay  
Transportation Authority

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Jennifer M. Garvey

Dated: 5/31, 2017

  
\_\_\_\_\_  
Defendant: Alfred Trinh

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Stephen A. Salisbury

IN WITNESS WHEREOF, the Parties have read and understand the terms of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the date shown by their signatures below.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Plaintiff: Mary Celeste Holmes

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Massachusetts Bay  
Transportation Authority

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Jennifer M. Garvey

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Defendant: Alfred Trinh

Dated: June 6, 2017

  
\_\_\_\_\_  
Defendant: Stephen A. Salisbury

# **EXHIBIT 1**



# **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

## **TRANSIT POLICE DEPARTMENT**

### **OFFICE OF THE CHIEF OF POLICE**

Kenneth Green  
Chief of Police

Committed to Excellence - State and Nationally Accredited



#### **EXCESSIVE USE OF FORCE CITIZEN COMPLAINT POLICY**

With the implementation of the new Patrol Plan, effective March 12, 2016, the following procedures will be instituted regarding all Excessive Use of Force Citizen Complaints:

1. Those who wish to file complaints against any MBTA Transit Police Department ("TPD") police officers may file such complaints on-line using the Complaint Form or by sending a letter to TPD Headquarters. Alternatively, when a Supervisor receives a complaint by telephone or email, arrangements will be made to provide the complainant with a copy of the Complaint Form by U.S. Mail or email or, as previously stated, complainant can submit a complaint by letter. The completed complaint form or letter will be forwarded to the Office of Professional Standards by email at [\*\*professionalstandards@mbta.com\*\*](mailto:professionalstandards@mbta.com) or by placing it in an envelope clearly marked Professional Standards and putting it in the Administrative Mail Box located in the report writing room at the TPD. All complainants' inquiries regarding the status of complaints should be directed to the Office of Professional Standards. Citizens should submit their complaints as soon as reasonably possible.
2. Immediately upon the receipt of an Excessive Use of Force Citizen Complaint, the Supervisor who is in receipt of the complaint will request all video of the incident via email at [\*\*videorequest @mbta.com\*\*](mailto:videorequest@mbta.com) and CC [\*\*Professional Standards@mbta.com\*\*](mailto:ProfessionalStandards@mbta.com). All video will be secured in DIMS under the appropriate Journal/Case number. An Excessive Use of Force investigation cannot proceed unless and until the Excessive Use of Force report reflects that video was requested. The Supervisor or Officer in Charge will ensure (through checking a box on the form) that the Officer's Use of Force report includes a statement that video evidence was requested or state that no video is available and approval was based solely on the Officer's reports and statements.
3. All video requests must contain the following information:
  - A. Date of Incident
  - B. Time of Incident
  - C. Location of Incident/Bus number
  - D. Purpose for request
  - E. Case number
  - F. Involved Officer(s)

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4. The Supervisor or Officer in Charge will ensure all Use of Force reports relating to the Excessive Use of Force Citizen Complaint are completed before the completion of the Officer subject to the complaint's tour of duty during which the complaint was received, unless otherwise authorized.
5. Where the Supervisor and not the Officer in Charge took the above-described steps, the Supervisor should forward the necessary documents, including the complaint, to the Officer in Charge, but can, under certain circumstances, forward the documents directly to the Office of Professional Standards. The Officer in Charge then forwards the documents to the Office of Professional Standards for review. The Office of Professional Standards will investigate the complaint and forward its findings to the Deputy Chief of Administrative Services. The Deputy Chief of Administrative Services will review the findings and documentation and either affirm the findings or return them to the Office of Professional Standards for further inquiry. Once the investigation is complete, the Deputy Chief will submit the findings to the Superintendent.
6. All Excessive Use of Force Citizen Complaints must be reviewed and approved by the Superintendent before they are finalized.
7. During the course of the investigation into the complaint, Supervisors may be required to answer questions by the Office of Professional Standards pertaining to approved Use of Force reports.
8. No TPD personnel will conduct an Excessive Use of Force investigation without having successfully completed the Basic Internal Affairs Investigation Course (40 hours).
9. Except for the Superintendent, any TPD personnel who had any involvement in the incident which is the subject of an Excessive Use of Force Citizen Complaint, including TPD personnel who investigated and/or approved Use of Force findings from the Office of Professional Standards, is prohibited from participating, in any capacity, in the Use of Force Committee relative to said case.
10. TPD must contact each complainant and request an interview as part of the Excessive Use of Force investigation. Unless the complainant declines, all complainants in an Excessive Use of Force investigation must be interviewed as part of the investigation. Although TPD prefers these interviews to be conducted in person, the complainant is to be given the choice by TPD for the interview to occur by phone. In person interviews can be at the location of choice of the complainant (e.g., at home) rather than solely at TPD Headquarters.
11. Consistent with the Chapter 120 of the Department Manual, the Professional Standards Unit will review records of Excessive Use of Force Complaints and other complaints that may be filed against a TPD police officer in part to look for patterns of conduct to determine if the employee's behavior warrants further action (e.g., training, counseling, etc.). A review will be conducted by the Superintendent of the TPD or his/her designee of the behavior of any TPD officer who receives one IA

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Pro alert, which is triggered by the one Use of Force incident.<sup>1</sup> The nature and scope of the review will reflect the nature of the alert, the type of incident(s) alleged in them and any other relevant facts that bear upon an officer's performance.

12. In general, all TPD personnel must undergo 4 hours of Management of Aggressive Behavior (MOAB) training within six months of employment. All TPD officers who receive one IA Pro alert, as a result of a Use of Force incident or other incident(s), and for whom the review conducted by the Superintendent or his/her designee indicates that the TPD officer is in need of more aggression management training will be required to undergo an additional 8 hours of MOAB training in the first available MOAB class. Thereafter, those TPD officers who complete the additional 8 hours of MOAB training will be monitored by the Superintendent and/or Deputy Chief of Administrative Services to ensure that the behavior which triggered the need for further training has been properly addressed. This monitoring will occur within 30 days after the completion of the 8 hour MOAB training, will continue for at least 60 days and will include a review of all relevant records and may include an interview with the officer in question. If the issue cannot be properly addressed through training and monitoring, appropriate disciplinary actions will be taken pursuant to Chapter 125 of the Department Manual. Records of the results of this monitoring will be created and maintained by TPD.

Please contact the Office of the Superintendent with any questions.



KENNETH GREEN  
Chief of Police

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<sup>1</sup> For non-Use of Force incidents, an IA Pro alert is triggered after a certain number of incidents have been recorded, which varies depending on the nature of the incidents. This will also trigger a review by the Superintendent of the TPD.

## **EXHIBIT 2**




# MBTA Transit Police

DEPARTMENT MANUAL

## CHAPTER 171

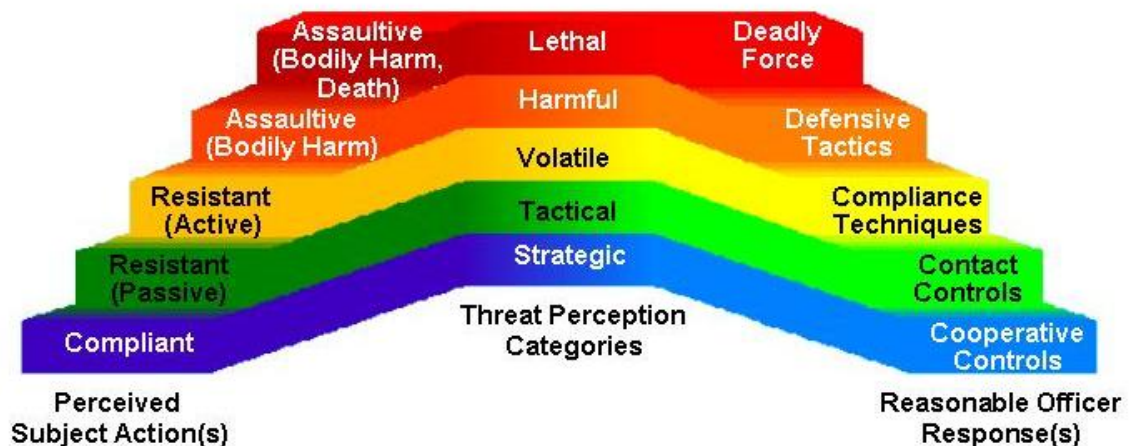
### General Order No. 2016-89

SUBJECT PATROL Use of Force in Response to Resistance/Aggression		DATE OF ISSUE 11/16/2016	EFFECTIVE DATE 11/21/2016
REFERENCES CALEA 1.3.1, 1.3.2, 1.3.4-8, 1.3.10, 1.3.12, 1.3.13		ISSUING STATUS <input type="checkbox"/> NEW <input checked="" type="checkbox"/> AMENDS <input type="checkbox"/> RESCINDS	ISSUING AUTHORITY  Kenneth Green Chief of Police
PAGE 1 OF 8			

1.0 **BACKGROUND.** By statute law and when necessary, Police Officers have the right to use force in response to resistance or aggression. Firearms are but one type of force that Officers are authorized to use in carrying out their responsibilities. In addition to firearms, Officers are provided with the Monadnock Autolock Expandable Baton™ (MEB), Oleoresin Capsicum spray (OC), and other equipment issued and/or approved by the Chief of Police (e.g., trained canine (K-9) dogs, etc.). It is important that Officers of the Department exercise the utmost care and restraint when using these devices and/or animals, since they have the potential to cause death or serious injury. {1.3.4}

1.1 **USE OF FORCE.** Use of force is the verbal and/or physical action an Officer may take to attain and/or maintain control of a situation or incident, which requires lawful intervention. The degree of force used is dependent upon the amount of resistance or threat to the safety of the public or the Officer. Control is reached when a person complies with the Officer's demands or the person is restrained or apprehended. The Officer must be prepared to utilize the force options that are reasonable for the circumstances, including the possibility of force de-escalation when appropriate. {1.3.1}

1.2 **USE OF FORCE MODEL.** {1.3.4}



Model taken from the MPTC



1.3 **USE OF FORCE FACTORS.** The amount and degree of force which may be exercised will be determined by the surrounding circumstances including, but not limited to:

- the nature of the offense;
- the amount of resistance, both physical and verbal, displayed by the subject against whom force is used;
- action by third parties who may be present;
- physical odds against the Officer; or
- the feasibility of alternatives.

2.0 **TERMINOLOGY.** {1.3.2}

2.1 **LETHAL FORCE.** Lethal force is any force that is intended to or likely to cause death or serious bodily injury. The use of a firearm is ALWAYS the use of lethal force. {1.3.2}

2.2 **LESS LETHAL FORCE.** Less lethal force is that amount of force that will generally not result in serious injury or death. It is usually employed as a defensive measure. Officers are issued less lethal police equipment, OC, MEB, to provide them with an advantage when fending off or subduing an unarmed assailant. {1.3.4}

2.3 **POLICY.** Policy is a statement of the values of the Department; the objectives and beliefs upon which the application of discretion is based.

2.4 **REASONABLE BELIEF.** The facts or circumstances the Officer knows, or should know, are such as to cause an ordinary and prudent Officer to act or think in a similar way under similar circumstances. {1.3.2}

2.5 **RESISTANCE.** Those actions made by the offender that use or threaten to use physical force or violence to prevent arrest/custody.

2.6 **RULE.** A rule is absolute, and sets forth things or actions which must, or must not, be done. There is no justification for violating a rule.

2.7 **SERIOUS PHYSICAL INJURY.** Serious physical injury is a bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the function of any body member or organ. {1.3.2}

3.0 **USE OF LESS LETHAL FORCE.** In determining when to use force, Officers of the Department are to be guided by the principle that the appropriate amount of force necessary to control the situation is the greatest amount of force that is permissible (see Use of Force above). Any use of force must be justified. Unnecessary use of force can never be justified. {1.3.1, 1.3.4}

3.1 **POLICY.** The use of force is never to be considered routine, is permissible only to overcome resistance or aggression directed against the Officer or others, and only in the appropriate amount necessary to effect lawful objectives. Above all, the MBTA Transit Police Department values the safety of its employees and the public. Likewise, it is vital that Officers should use force with a high degree of restraint. {1.3.1}

- 3.2 **RULES.** The above policy is the basis of the following rules designed to guide Officers in cases involving the use of force. {12.2.1 g}

**Rule 1** Officers shall not use force except to overcome resistance or aggression directed against the Officer or others. {12.2.1 g}

**Rule 2** Officers shall only use the appropriate amount of force necessary to effect lawful objectives. {1.3.1, 12.2.1 g}

**Rule 3** Officers shall not use the MEB or another instrument to strike a person on the head unless the use of lethal force is justified. {12.2.1 g}

**Rule 4** No MBTA Transit Police Officer shall be authorized to carry issued less lethal weapons (MEB/OC) until he/she has: (1) been issued a copy of the Department's use of force policy, received instruction and attended a lecture regarding the use of force policy, and legal updates; and is (2) qualified by a certified MPTC Defensive Tactics Instructor. {1.3.4, 1.3.10, 1.3.12, 12.2.1 g}

- 4.0 **USE OF LETHAL FORCE/FIREARMS.** This section sets forth guidelines for MBTA Transit Police Officers making decisions regarding the use of lethal force. The guidelines have been developed with serious consideration for the safety of both the Officer(s) and the public, and with the knowledge that Officers sometimes must make split second decisions in life and death situations. The policy and the rules set forth below will be the standards by which the actions of MBTA Transit Police Officers will be measured.

The MBTA Transit Police Department places its highest value on the life and safety of its Officers and the public. The Department's policies, rules and procedures are designed to ensure that this value guides Officers' use of firearms or any other type of lethal force.

The citizens of the Commonwealth have vested in their Officers the power to carry and use lethal force in the exercise of their service to society. This power is based on trust and, therefore, must be balanced by a system of strict accountability. The serious consequences of the use of lethal force by Officers necessitate the specification of limits for Officer discretion; there is often no appeal from an Officer's decision to use lethal force. Therefore, it is imperative that every effort is made to ensure that each use of lethal force is not only legally warranted, but also rational and reasonable. {1.3.1}

Officers are equipped with lethal force, firearms, as a means of last resort to protect themselves and others from the immediate threat of death or serious physical injury. The basic responsibility of Officers to protect life also requires that they exhaust all other reasonable means before resorting to the use of lethal force. Even though all Officers must be prepared to use lethal force when necessary, the utmost restraint must be exercised in its use. {1.3.2}

- 4.1 **POLICY.** The use of lethal force is never to be considered routine, it is permissible only in defense of life or serious bodily injury, and then only as a last resort. Above all, the MBTA Transit Police Department values the safety of its employees and the public. Likewise, it is vital that Officers should use firearms/lethal force with a high degree of restraint. Whenever a police shooting occurs, an investigation will be conducted pursuant to Department Manual, Chapter 172, and Investigative Procedures for Police Shootings.

- 4.2 **RULES.** The above policy is the basis of the following rules designed to guide Officers in all cases involving the use of lethal force and/or firearms: {1.3.4, 1.3.12, 12.2.1 g}

- Rule 1** Officers shall use lethal force only when they reasonably believe that the action is necessary to protect himself or herself or another person from imminent death or serious physical injury. {1.3.2, 1.3.4, 12.2.1 g}
- Rule 2** Officers shall not use lethal force against a fleeing felon except to protect himself or herself or another person from imminent death or serious physical injury, as a direct result of the felon's flight. {1.3.4, 12.2.1 g}
- Rule 3** Officers may discharge their firearms only when doing so will not unreasonably endanger innocent persons. {1.3.4, 12.2.1 g}
- Rule 4** Officers shall not use lethal force to subdue persons whose actions are destructive to property or injurious only to themselves unless such actions are an imminent threat of death or serious physical injury to the Officer or others. {1.3.4, 12.2.1 g}
- Rule 5** Officers shall not discharge their weapons at a moving vehicle unless there is imminent threat of death or serious physical injury to the Officer or others and there is no reasonable alternative. {1.3.4, 12.2.1 g}
- Rule 6** Officers shall not shoot a firearm while operating a motor vehicle. {1.3.4, 12.2.1 g}
- Rule 7** Officers shall not fire warning shots or shoot to signal for help. {1.3.3, 1.3.4, 12.2.1 g}
- Rule 8** Officers shall not draw or display their firearms unless they reasonably believe there is a threat or probable cause to believe there is a threat to life or serious bodily injury. {1.3.4, 12.2.1 g}
- Rule 9** No MBTA Transit Police Officer shall be authorized to carry a Department firearm until he/she: {1.3.4, 1.3.12, 12.2.1 g}
- has been issued a copy of the Department's use of force policy; {1.3.4, 1.3.12, 12.2.1 g}
  - has received instruction and attended a lecture regarding the use of force policy, home safety, and legal updates; and {1.3.4, 1.3.12, 12.2.1 g}
  - is qualified by a certified MBTA Transit Police Firearms Instructor. {1.3.4, 1.3.12, 12.2.1 g}

**4.3 DESTROYING ANIMALS.** Officers are authorized to use a firearm to destroy an animal if it can be done safely and with the permission of their immediate Supervisor under these circumstances;

- vicious or suspected rabid animal when it presents a danger to person(s) or other animals in the area and other methods of containment are either insufficient or unavailable; and
- animal that is so seriously injured that humanity dictates its relief from further suffering.

4.3.1 Officers will adhere to the following guidelines when destruction is necessary.

- an Officer destroying a suspected rabid or vicious animal should make an effort to avoid shooting the animal in the head;
- ensure that the destruction can be done without endangering the life and/or property of anyone, including being cognizant of the shooting background;
- immediately notify Animal Control and remain on the scene until it is picked up for examination if a person has been bitten or attacked by the animal;
- before destroying any domestic animal make a reasonable effort to locate the animal's owner or person(s) caring for the animal; and
- if the animal's owner/caretaker cannot be located or is not available, determine if Animal Control can respond to transport the animal to an appropriate facility.

5.0 **INJURIES.** If any visible injury results from the use of force, or if the suspect complains of any injury, immediate appropriate measures will be undertaken in accordance with first responder protocol. After any initial first aid is administered, the Officer(s) will arrange to have the injured party examined by Emergency Medical Services (EMS) personnel. The complaint and resulting medical attention will be documented in the police incident report and BlueTeam (see below). {1.3.5}

5.1 **STRESS COUNSELING.** When an Officer has used force and that use of force has resulted in a serious injury or death, the Officer will automatically be referred to stress counseling pursuant to Department Manual, Chapter 245, CRITICAL INCIDENT STRESS MANAGEMENT.

6.0 **USE OF FORCE VIDEO REQUEST.** The Shift Supervisor on duty at the time of the incident will ensure the Use of Force Report is completed correctly and accurately. All Use of Force Reports will include the completed body image. The Supervisor will forward the report via Blue Team to the appropriate Shift Lieutenant for review and approval.

The Shift Lieutenant/Supervisor will request all video of the incident via email at [videorequest@mbta.com](mailto:videorequest@mbta.com) and the Professional Standards Unit will be "cc'd" at [ProfessionalStandards@mbta.com](mailto:ProfessionalStandards@mbta.com). All video requests must contain the following information:

- date of Incident;
- time of Incident;
- location of incident/bus number;
- purpose for request;
- case number; and
- Officer(s) involved.

All video will be secured in the Digital Information Management System (DIMS) under the appropriate case number. The Shift Lieutenant/Supervisor will ensure the Officer's Blue Team narrative includes a statement that video evidence was requested. If no video is available, the Shift Lieutenant/Supervisor will state in Blue Team his/her approval was based solely on the Officer's reports and statements.

Prior to approving the Officer's Use of Force report the Shift Lieutenant will review the video to ensure his Officer is in compliance with this chapter. Upon completion, the Shift Lieutenant will forward his/her recommendation to the Professional Standards Unit via Blue Team.

- 7.0 **USE OF FORCE REVIEW.** The following procedures will be adhered to in all cases where an Officer uses force, except firearm (see section 8.0), in the performance of his/her duty: {1.3.7}

- 7.1 **USE OF FORCE REPORTS.** Each Officer who applies physical force, however slight, to compel an individual to comply or uses an MEB, discharges their OC, causes a canine to bite or draws his/her firearm and points it at any person, group, or vehicle, or employ any other application of force that results in or alleged to have resulted in, an injury or death, other than the discharge of a firearm, will complete a Blue Team Use of Force Report. Each field is to be filled out as completely as possible. The summary of incident section must contain all pertinent information regarding the Use of Force. {1.3.6 b, c, d, 1.3.7}

This report will be electronically submitted to the Officer's immediate Supervisor for review and approval before completion of the tour of duty during which the incident occurred or within a reasonable amount of time with a Supervisor's approval. The Supervisor will electronically forward the report through the chain of command to the Office of Professional Standards as soon as possible, but no later than the Officer's next tour of duty. If the Blue Team entry is not complete, the Supervisor will return it to the Officer. The Office of Professional Standards will forward a copy of the report to the Patrol Operations Division Commander. {1.3.7}

- 7.2 **USE OF FORCE COMMITTEE.** Use of Force Reports will be reviewed by a standing Committee on Use of Force, appointed by the Chief of Police, consisting of the Superintendent or his/her designee, Patrol Operations Division Commander, a Supervisor assigned to the Professional Standards Unit, the Training Supervisor, the Department Firearms Instructor, and a Patrol Officer. {1.3.7}

Quarterly, the Use of Force Committee will review each Use of Force Report to determine whether the use of force was in compliance with Department policy, rules, and procedures. The Committee's findings will be submitted through the chain of command to the Chief of Police for review and appropriate action. {1.3.7}

- 7.3 **ANNUAL USE OF FORCE ANALYSIS.** Annually, the Administrative Services Division (ASD) Commander or his/her designee will complete an analysis of all Use of Force Reports. He/she will submit the results of this report through the chain of command to the Chief of Police. This analysis will include a review of any reports submitted in accordance with the Firearms Discharge Section referred to in this chapter. {1.3.13, 11.4.1 b, c, d, e}

- 7.4 **REMOVAL FROM LINE-DUTY ASSIGNMENT.** When an Officer has used force and that use of force has resulted in serious physical injury or a death, the Officer will automatically be reassigned to administrative duties pending the review of the case by the Committee on Use of Force (see Sections 8.0 and 8.6 of this Chapter for firearms). {1.3.8}

8.0 **FIREARMS DISCHARGE REVIEW.** The following procedures will be adhered to in all cases where a Police Officer discharges a firearm other than for training purposes, competition, or practice at an approved range. These procedures will also be followed whenever a firearms discharge results in an injury, regardless of the circumstances. If, in the performance of duty, an Officer draws his/her firearm and points it at any person, group, or vehicle, the Officer will complete a Blue Team Use of Force Report. {1.3.6 a, 1.3.7}

8.1 **INJURIES.** If any injury results from the discharge of a firearm, **immediate** appropriate measures will be undertaken in accordance with first responder protocol. After any initial first aid is administered, the Officer(s) will arrange to have the injured party **immediately** examined by Emergency Medical Services (EMS) personnel. The complaint and resulting medical attention will be documented in the police incident report and Firearms Discharge Report (see below). {1.3.5, 1.3.7}

8.2 **FIREARMS DISCHARGE REPORT.** An MBTA Police Firearms Discharge Report and a Blue Team Report will be completed by an Officer discharging his/her firearm and submitted to his/her Supervisor before completion of the tour of duty during which the incident occurred or within a reasonable amount of time with a Supervisor's approval. Reports will be forwarded through the chain of command, to the Office of Professional Standards who will provide the Patrol Division Commander with a copy of the reports. A copy of the Blue Team Report, the police incident report, and/or affidavit with detailed information regarding the incident will be attached to the Firearms Discharge Report. The Firearms Discharge Report and Blue Team narrative section will contain all pertinent information regarding the firearms discharge. **No reference to any attached documents will be made.** {1.3.6 a, 1.3.7}

If the discharge occurred during the Officer's time off, he/she will submit the Firearms Discharge Report as soon as practicable.

In either case, if the Officer is incapacitated due to injury and/or hospitalization, the report will be completed as soon as practicable.

8.3 **FIREARMS DISCHARGE REVIEW COMMITTEE.** A Firearms Discharge Review Committee appointed by the Chief of Police will review firearm Discharge Reports within 30 days of the incident. The Committee may request additional time if circumstances require it. The Committee will consist of the Superintendent, the Patrol Operations Division Commander, the ASD Commander, a Supervisor assigned to the Professional Standards Unit, the Training Supervisor, the Department Firearms Instructor, a Patrol Supervisor, and a Patrol Officer. {1.3.7}

The Committee will review each incident to determine whether the firearms use was in compliance with the Department's policies, rules and procedures. During the review process, the Committee will have access to all investigative reports and materials that were submitted regarding the shooting. {1.3.7}

The findings of the Committee will be submitted through the chain of command to the Chief of Police for review and appropriate action. {1.3.7}

The District Attorney's Office, of the appropriate jurisdiction where the shooting occurred, will conduct a parallel investigation independent from the Department investigation (Department Manual, Chapter 172, Investigative Procedures for Police Shootings), or the Firearms Discharge Committee's review.

The Committee sits as an investigatory body in determining the legitimacy of the use of force by Officers. As such, the conduct and content of its proceedings are privileged. No member of the Committee may comment publicly or privately on the

Committee's proceedings or deliberations without the express permission of the Chief of Police. Furthermore, all evidence received and reviewed by the Committee, including but not limited to, police reports, memoranda, photographs, diagrams, written or recorded statements of witnesses, medical reports, ballistic reports, video or audio recordings and any other document of any kind and in any format is the property of the MBTA Transit Police Department and may not be copied or disseminated to any person or entity without the express permission of the Chief of Police.

- 8.4 **REMOVAL FROM LINE-DUTY ASSIGNMENT.** When a Officer has discharged a firearm during the performance of his/her duties, the Officer will automatically be re-assigned to administrative duties pending the completion of the Department police shooting investigation, and upon approval of the Chief of Police. {1.3.8}
- 8.5 **FIREARMS RE-CERTIFICATION.** If the facts of the incident support a conclusion that the use of lethal force was not in compliance with MBTA Transit Police policies, rules and procedures, the Officer will be required to successfully complete a fire-arms certification training program in addition to any discipline that may be imposed.

*Section 1.0, 2.6, 3.1, 4.3, 6.1, 7.0 Rules 1, 4, 6 revised 9/2010  
Section 4.1, 5.0, 6.1, 6.3 revised 7.2 deleted 1/2014  
Sections 6.2, 6.3, 7.2, 7.3 revised 5/16  
Sections 6.0 added, 7.1, 7.2, 8.3 revised 11/16*

## **EXHIBIT 3**





# MBTA Transit Police

DEPARTMENT MANUAL

## CHAPTER 101

### General Order No. 2016-19

SUBJECT  
STANDARDS OF CONDUCT  
Standards of Conduct

REFERENCES  
CALEA 1.3.1, 11.3.2, 26.1.1 inclusive,  
26.1.3, 26.1.4, 26.1.5, 41.2.2

PAGE  
1 OF 8

DATE OF ISSUE  
04/22/2016

EFFECTIVE DATE  
04/27/2016

ISSUING STATUS

☐ NEW  
☒ AMENDS  
☐ RESCINDS

ISSUING AUTHORITY

Kenneth Green  
Chief of Police

- 1.0 **POLICY.** Both sworn and civilian members of the Department are expected to abide by standards of behavior that are professional and appropriate to the mission of the Department and the integrity of the organization. Behavioral standards have been developed to provide guidance to employees in their conduct. Standards of conduct set forth the rules for behavior at all times. It is expected that once a behavioral standard is set forth or published, it will be followed, at all times, by all employees. {12.2.1 f}

All Supervisors will immediately report all violations of law committed by employees under their command or control through the chain of command. Furthermore, all Supervisors will report, through the chain of command, violations of Department policies, rules, or procedures committed by employees under their command or control that require further disciplinary action. Failure to do so, in either case, will be considered neglect of duty. The reports will include a recommendation concerning any further action or disposition. {12.2.1 f, 26.1.5}

- 2.0 **REQUIRED CONDUCT.** The following conduct is **REQUIRED** of all MBTA Transit Officers and civilian employees (as noted): {26.1.1}

2.1 **LOYALTY AND INTEGRITY.** An Officer shall be faithful to his/her Oath of Office, Oath of Honor, Code of Ethics, the principles of professional police work and the goals, objectives and Core Values of the Department. He/she shall not allow personal motives to govern his/her decisions and conduct. The public demands that the integrity of its Officers be above reproach. The dishonesty of a single Officer may cast suspicion on the entire Department. Each Officer must scrupulously avoid any conduct that might compromise the integrity of themselves, fellow Officers, or the Department.

2.2 **TRUTHFULNESS.** All employees shall state the truth at all times, whether under oath or not, in giving testimony, submitting reports or in connection with any official order or duties.

2.3 **BEHAVIOR.** Officers, whether on or off duty, shall be governed by the ordinary and reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit upon himself or herself or the Department. "Conduct Unbecoming an Officer" shall include that which tends to indicate that the Officer is unable or unfit to continue as an MBTA Transit Officer or tends to impair other employees or the operation of the Department. Both sworn and civilian members of the Department shall conduct themselves, at all times, both on and off duty, in such a manner as to reflect most favorably on the Department.

- 2.4 **CONDUCT AND DEPORTMENT.** Both sworn and civilian members of the Department shall be civil, orderly and moral in their conduct, character and habits both official and private.

In the performance of his/her duties, MBTA Transit Officers shall:

- respond directly to his/her post or assignment and patrol diligently until or unless properly relieved;
- control his/her temper at all times;
- exercise patience and discretion;
- not shrink from danger or responsibility in time of peril;
- act with energy, sound judgment, and in the proper exercise of his/her authority;
- maintain in confidence all official information coming to his/her attention; and
- obey all orders and instructions of his/her Superiors.

- 2.5 **ATTENTION TO DUTY.** All sworn and civilian members, while on duty, shall devote their full time and attention to the service of the Department and to the citizens of the community. While on duty, they shall remain awake and alert at all times.

- 2.6 **COURTESY.** As a professional organization, it is the policy of this Department to treat all persons with civility and respect at all times. Both sworn and civilian members shall be tactful in the performance of their duties and are expected to exercise the utmost patience and discretion even under the most trying circumstances. {26.1.1}

- 2.7 **ADDRESSING SUPERIOR OFFICERS.** In addressing or referring to a Superior Officer, his/her title shall be used. The rank and/or title of a Superior Officer will be used when he/she is being addressed or referred. The appropriate salutation when addressing or referring to a Deputy Chief will be "Deputy".

- 2.8 **IDENTIFICATION.** All employees will be issued an official Department identification with the employee's photograph. All Officers shall wear an MBTA Transit Police badge and name tag (when possible) on their outermost uniform garment and carry their police photo-identification card while on duty. Upon request, an MBTA Transit Officer will give his/her badge number and last name. In addition, in accordance with Massachusetts General Law (MGL) Chapter 41 § 98D, Officers shall exhibit their photo-identification upon lawful request for purposes of identification. Plain-clothes Officers will identify themselves to the public while on duty by producing their badge and photo-identification card, except when the withholding of such information is necessary for the performance of police duties (e.g. undercover operations, etc.) or in emergency situations. A request for an Officer's name and badge number will not be used as a factor in determining the appropriate police response to the situation. Other employees, in performance of their official duties, will produce their employee photo-identification card upon lawful request. {22.2.7 a, b}

- 2.9 **CIVIL DISPUTES.** All Officers shall take a neutral position in any dispute of a civil nature, acting only to prevent or control any breach of the peace that may arise.

- 2.10 **COOPERATION WITH OTHER OFFICERS.** Individual Officers shall cooperate with and assist each other at every opportunity and shall refrain from criticism of his/her fellow Officers or Superiors. In time of emergency, Officers are expected to be calm and resolute, and to cooperate with other Officers so that mutual protection may be afforded.
- 2.11 **INTERFERENCE WITH WORK.** Officers shall not interfere with cases assigned to other Officers except with the consent of the assigned Officer. Officers shall not unnecessarily interfere with the work or operation of any unit of the judicial system.
- 2.12 **SALUTING THE FLAG.** All Officers, when in uniform in any public place, shall stand at 'attention' and salute in a military manner at the moment of the passage of the flag of the United States of America, carried in a parade or procession, unless duties at the time make such action inadvisable.
- 2.13 **CRIMINAL COMPLAINT AGAINST AN EMPLOYEE.** Any employee, who learns that an application for a criminal complaint, criminal investigation, a complaint or indictment has been issued against him/her, shall immediately notify their Division Commander or Civilian Manager, in writing.
- 2.14 **SUMMONS, SUBPOENA, OR OTHER NOTIFICATION.** Whenever any sworn or civilian member of this Department receives official notification that he/she is, or will be, legally mandated to appear before any Federal, State, County or Municipal Court, Grand Jury or investigative board or body in any criminal case or administrative hearing (except while acting in a prosecutorial capacity as a member of the Department), he/she shall, prior to testifying, notify the appropriate Division Commander or Civilian Manager, in writing, of the testimony he/she intends to give and, if legally allowable, the nature of the proceedings.
- A copy of the summons, subpoena or other legal writ requiring the member's appearance or the submission of his/her records shall be submitted along with the written report.
- Upon completion of such testimony, if legally allowable, the member shall submit a summary report of the proceedings and such testimony, as he/she was required to give.
- 2.15 **LICENSE REQUIREMENT.** All Officers are required to possess and maintain an active driver's license valid in the Commonwealth of Massachusetts. The license must be in the employee's possession when operating a Department vehicle.
- If, for any reason, an employee loses his/her right to operate a motor vehicle, they shall immediately notify the appropriate Division Commander or Civilian Manager in writing.
- 2.16 **CONTACT INFORMATION.** All sworn and civilian members shall provide their up-to-date home address and his/her home telephone or cellular phone number for Department records.
- 2.16.1 **CHANGE OF ADDRESS.** Any employee who changes their address or telephone number shall notify the Workforce Planning Coordinator in writing within thirty days.

- 3.0 **PROHIBITED CONDUCT.** The following conduct is **PROHIBITED** for MBTA Transit Officers and civilians and may result in severe discipline up to and including discharge (as noted): {26.1.1}
- 3.1 **CRIMINAL LAWS.** Whether on or off duty, employees shall not knowingly commit any criminal offense under any laws of the United States, the Commonwealth of Massachusetts, or any other jurisdiction in which the employee is present. {26.1.1}
- 3.2 **USE OF DRUGS OR ALCOHOL.** Incorporated herein by reference, is the MBTA Drug and Alcohol Policy and Testing Program, dated August 1, 2001. To access the policy, follow this link. [MBTA Drug and Alcohol Policy](#). {26.1.1}

- 3.2.1 **PRESCRIPTION AND “OVER-THE-COUNTER” MEDICATIONS (SECTION II, B).** All MBTA employees who perform safety-sensitive duties must be fit to perform those duties. Such employees should inform their physician, pharmacist, and/or other health care provider of the safety-sensitive nature of their work prior to obtaining prescriptions or “over-the-counter” medication.

The MBTA, under its own authority, requires that safety-sensitive employees consult with Medical Operations before using prescription or over-the-counter medications that contain alcohol or other substances that may impair their ability to perform safety-sensitive duties. This requirement applies only to safety-sensitive employees, and involves only medications that contain substances that may impair their ability to perform their safety-sensitive duties.

A Medical Operations physician or nurse will make the determination as to whether the employee's use of the medication could impair the employee's performance or jeopardizes the safety of the employee, his/her co-workers and/or the public. If Medical Operations determines that the employee's use of the medication could impair the employee's performance or jeopardizes the safety of the employee, his/her co-workers and/or the public, the physician or nurse will advise the employee of any job-related restrictions while taking the medication. These restrictions can include a restrictive time frame prior to reporting for work while using the medication, a restriction against performing safety-sensitive job duties, and/or medical disqualification from their safety-sensitive position during the use of the medication. If it is determined that an employee is medically disqualified from all work or certain job duties, the clinic will notify the employee and the employee's supervisor. The supervisor will not be provided any further information unless the employee requests in writing that his or her supervisor be so informed. The employee will remain temporarily disqualified until cleared to return to work by Medical Operations.

Safety-sensitive employees who fail to report their use of potentially impairing prescription drugs or “over-the-counter medications” to Medical Operations and to obtain clearance from Medical Operations for their on-duty use of such medication in accordance with this section, and who subsequently have a positive drug and/or alcohol screen, are subject to discipline including discharge.

This prohibition extends to taking potentially impairing prescription and over-the-counter medications prior to scheduled duty or published on-call hours (duty rosters). Off-duty safety-sensitive employees who are unexpectedly

called to duty shall have the opportunity to acknowledge the use of such medications or over-the-counter medications.

3.2.2 **ALCOHOL/DRUGS.** Officers shall not purchase, drink or carry alcoholic beverages when on duty, unless it is necessary to gain evidence and upon the order of a Superior Officer. No civilian shall purchase, drink or carry alcoholic beverages when on duty. Both sworn and civilian members are prohibited from consuming alcohol four (4) hours prior to reporting for duty and during the entire workday. An employee is "on duty" or "subject to duty" within the meaning of this provision: {26.1.1}

- on his/her regularly scheduled days of duty;
- from the time he/she arrives on the property of a duty reporting assignment, until the time he/she completes his/her work assignments and leaves the property;
- when reporting to the MBTA clinic for medical evaluation;
- when the employee has volunteered or has been assigned extra work on his/her day off, vacation, etc;
- while on an "on-call" status; and
- while involved in MBTA business while not on MBTA property.

Sworn and civilian members, while off duty, should refrain from consuming alcoholic beverages to the extent that it results in behavior that would tend to discredit them or the Department. Officers, off-duty, shall not purchase or consume alcoholic beverages in public places while wearing the uniform of the Department or while wearing any part of the uniform which could indicate that they are employees of the Department.

Unauthorized use of controlled substances shall be grounds for disciplinary action up to and including discharge. Employees shall not use any prescription drugs, controlled substances, narcotics or hallucinogens except when prescribed in the treatment of the employee by a registered physician or dentist. Prescription drugs, controlled substances, narcotics or hallucinogens shall mean any substances so defined in [MGL, Chapter 94C](#). {26.1.4 c}

3.3 **USE OF OFFICIAL POSITION.** Sworn and civilian members shall not use their official position, MBTA Transit Police badge (Officers), MBTA Transit Police Department identification or MBTA pass: (a) for personal or financial gain; (b) for obtaining privileges not otherwise available to them except in the performance of duty; or (c) for avoiding consequences of illegal acts. Employees shall not lend to another person their badges (Officers), MBTA Transit Police Department identification cards, or MBTA pass, or permit them to be photographed or reproduced without the written approval of the Chief of Police. Sworn and civilian members shall not authorize the use of their names, photographs or official titles which identify them as Officers or Department employees, in connection with testimonials or advertisements for any person, commodity or commercial enterprise, without the approval of the Chief of Police. {26.1.1}

Sworn and civilian members of the Department shall not directly or indirectly be concerned with making any compromise or arrangements between criminals,

arrested persons, or others alleged to be involved in criminal activity and persons who have suffered by their acts.

3.3.1 **INVESTIGATIONS.** Sworn members will not initiate, conduct or participate in any criminal investigation that involves a family member, friend or acquaintance, unless authorized by the Chief of Police or his/her designee.

3.4 **UNAUTHORIZED TRANSACTIONS.** Employees shall not enter into any transactions of material value at substantially lower than fair market value, or the value at which such goods or services are being offered to the general public, when such a transaction takes place between themselves and any person involved in any matter or case which arose out of their employment with the Department, except as may be specifically authorized by the Chief of Police.

3.5 **TESTIMONIALS AND PRESENTS.** Employees shall not collect or receive any money or other thing of value from any source for the purpose of making a present to any active employee unless specific permission is granted by the Chief of Police. In accordance with [MGL 268A](#) and the [State Ethics Commission](#), sworn and civilian members of the Department shall not seek or accept such a present, regardless of value, if it is offered in exchange for their agreeing to perform or not perform an official act. Sworn or civilian employees may not ask for or accept anything worth \$50.00 or more from anyone with whom they have had official dealings.

Under the provisions of [MGL, Chapter 268, § 9A](#), no person shall sell tickets or solicit contributions for a testimonial dinner or similar function for any person in active employment in any law enforcement agency or regulatory body of the Commonwealth or any city or town.

3.6 **UNDUE INFLUENCE.** Sworn and civilian members shall not seek or obtain the influence or intervention of any person outside the Department for purposes of personal advantage, transfer or advancement.

3.7 **MEMBERSHIP IN ORGANIZATIONS.** Employees shall not affiliate with or become a member of any organization if such affiliation or membership would in any way impede or prevent their effective performance of duty.

3.8 **DISCOURTESY.** No employee shall conduct him/herself in a manner that is rude, impolite, contemptuous or insolent to or about a Superior Officer, or a fellow employee, or representatives of other agencies, or to the public. {26.1.1}

- employees shall refrain from vulgar, violent, coarse, obscene or profane language; and {26.1.1}
- employees shall avoid any unnecessary conversation and/or argument with a prisoner(s). {26.1.1}

3.9 **USE OF FORCE.** In making arrests or while engaged in the performance of their duties, Officers shall use reasonable force when force is used to accomplish lawful objectives. {1.3.1, 26.1.1}

3.10 **RIDING IN VEHICLES.** While on duty, Officers shall not ride in any personal vehicle unless police business requires such action. (e.g. attending court, detail, etc.) No Officer will use a personal vehicle under any type of emergency conditions. (e.g. vehicle pursuit, emergency response operation, etc.) (41.2.2 d)

- 3.11 **TESTIMONY.** On non-MBTA business, employees shall not testify in any civil case in any court, or for the defendant in a criminal case in any court, unless legally summonsed to do so and/or unless the employee shall have received permission or order from the Chief of Police, Superintendent, or a Division Commander.
- 3.12 **WRITTEN COMMUNICATIONS.** No employee shall send any written communication with reference to police business to any person or department except by authority of the Chief of Police.
- 3.13 **GIFTS AND GRATUITIES.** Employees shall not, under any circumstances seek, solicit or accept any gift, gratuity, loan, reward or fee where there is any direct or indirect connection between the solicitation or acceptance and their Department membership or employment, except as may be specifically authorized by the Chief of Police. {26.1.1}

Employees must be especially guarded in their official relationship with persons holding or seeking to hold licenses issued by local licensing authorities, who might expect or seek preferential police treatment. All Department personnel must offer and are expected to make payment for their meals and beverages.

Any unauthorized gift, gratuity, fee or reward coming into the possession of any employee shall be forwarded forthwith to the Chief of Police, together with a written report of the circumstances connected therewith.

- 3.14 **RECOMMENDING PRIVATE SERVICES.** Employees shall not officially or unofficially recommend or suggest to the public, the employment or purchase of any particular professional or commercial service or product (e.g. lawyers, bondsmen, undertakers, towing services or burglar alarm companies).
- 3.15 **TOBACCO USE.** The use of any tobacco or a similar type product (e.g., cigarettes, cigars, chewing tobacco, snuff, etc.) is prohibited while on duty. Officers hired after January 1, 1988, are prohibited from smoking any tobacco product per [MGL, Chapter 31, § 64](#).
- 3.16 **POLITICAL ACTIVITIES.** Officers are prohibited from participation in political activities while in uniform. All actions that could even give the impression that an Officer is using his/her official position with the Department to influence the electoral process are to be avoided. Officers shall not be required to solicit or be obliged to make contributions in money, services, or otherwise, for any political purpose.
- 3.17 **ASSOCIATIONS WITH CRIMINALS.** Employees will avoid any or regular continuous associations or dealings with persons whom they know, or should know, are persons under criminal investigation or indictment, or who are convicted felons. The only exceptions are where such association is necessary in the performance of official duties, with the knowledge and approval of the Chief of Police, or where unavoidable because of immediate family relationships.
- 3.18 **HARASSMENT.** Employees shall not participate in any form of discriminatory practice, to include harassment based on an individual's gender, race, color, national origin, religion, age, disability, sexual orientation, or other legally protected class or characteristic. At the time of employment, and thereafter, annually, each employee shall be issued a written copy of the MBTA Policy and Procedures for the [Prevention of Harassment in the Workplace](#) (in compliance with [MGL, Chapter 151B, § 3A](#)). Said Policy is herein incorporated by reference. {26.1.3}

In cases where the offending party is in the complainant's chain of command, employees may make a complaint to a position superior to the offender, to the Authority's Office of Diversity and Civil Rights, or to the Massachusetts Commission Against Discrimination, at their discretion. {26.1.3}<sup>i</sup>

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*Sections 2.7, 3.0, 3.5, 3.15 revised 8/2006*  
*Section 3.1 added 8/2006*  
*Section 2.8 revised 2/2008*  
*Section 3.9 revised 3/8/2011*  
*Section 2.8, 2.13 11/9/2011*  
*Section 2.7 revised 6/27/2012*  
*Section 2.7 revised 6/3/2014*  
*Section 3.11 revised 4/22/16*



## **EXHIBIT 4**



# MBTA Transit Police

DEPARTMENT MANUAL

## CHAPTER 120

### General Order No. 2016-85

SUBJECT

STANDARDS OF CONDUCT

Internal Affairs and Citizen Complaints Investigations

REFERENCES

CALEA 12.2.2, 25.1.1, 26.1.4, 26.1.8,  
52.1.1-5, 52.2.2, 52.2.3, 52.2.4, 52.2.6,  
52.2.8

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ISSUING AUTHORITY

Kenneth Green  
Chief of Police

- 1.0 **BACKGROUND.** The responsibility of the Professional Standards Unit is to thoroughly investigate allegations of misconduct originating from all internal and external complaints.

Investigating alleged employee misconduct carries with it the important responsibility of conducting such investigations in accordance with the law and professionally accepted practices. In order for the public to have confidence in the Department, there must be a clearly established mechanism for complaints to be received and investigated in a fair and impartial manner so that a positive and constructive resolution can be achieved. The MBTA Transit Police Department has established policies, rules, and procedures for handling the receipt, investigation, and resolution of allegations of employee misconduct.

These policies, rules, and procedures have been established to clearly set forth the Department's commitment to protect the right of the public, and the right of employees of the Department and complainants to expect efficient, fair, and impartial resolution of investigations and be protected from unwarranted harassment.

- 2.0 **POLICY.** The MBTA Transit Police Department recognizes the right of all citizens to initiate a complaint and receive a fair and thorough investigation and unbiased adjudication. All elements of the complaint process will be handled in a manner that prohibits discrimination on the basis of race, gender, religion, ethnicity, sexual preference, national origin, or other legally protected class. All citizen complaints of employee misconduct, including anonymous complaints, will be promptly investigated. All reports or accusations made against employees of the Department or the Department in general, from all sources, will be thoroughly investigated in order to ensure the integrity of the Department. The Department is committed to objectivity, fairness, and justice through intensive, impartial review and investigation of all complaints. The public has a right to expect efficient, fair, and impartial law enforcement. All misconduct must be detected, thoroughly investigated, and properly adjudicated to assure the maintenance of these qualities. {52.1.1, 52.1.2}

- 3.0 **TERMINOLOGY.** The following terms are used:

- 3.1 **IAPRO.** IAPRO is a computerized case management system used by the Professional Standards Unit for Citizen's Complaints and Internal Affairs investigations.
- 3.2 **BLUETEAM.** BlueTeam is a web-based program that allows Officers and Supervisors to enter and manage incidents (e.g., use of force reports, vehicle pursuits, etc.) from "the field". Once entered into BlueTeam, the incidents are then reviewed and managed through IAPRO.
- 3.3 **CITIZEN.** Any individual not a member of the MBTA Transit Police Department.

- 3.4 **COMPLAINT.** An allegation of misconduct made against a member of the Department. Complaints will generally fall within one of two categories.
- 3.4.1 **INTERNAL AFFAIRS COMPLAINTS.** Internal Affairs complaints are those more serious complaints (see Section 6.1) that will be investigated by the Professional Standards Unit in accordance with this chapter. {52.2.1 b}
- 3.4.2 **CITIZEN'S COMPLAINTS.** Citizen's complaints are minor complaints (see Section 6.2) that are not serious and are non-criminal in nature. {52.2.1 a}
- 3.5 **EMPLOYEE.** Any sworn or civilian, permanent or temporary, member of the MBTA Transit Police Department.
- 3.6 **EXONERATED.** The incident did occur, but the actions of the accused were in compliance with Department policies, rules, and procedures. This definition would also include those allegations not directed at the individual but rather deal solely with a complainant's objection to, or criticism of, a Department policy or procedure.
- 3.7 **NOT SUSTAINED.** The investigation failed to discover sufficient evidence to clearly prove or disprove the allegation(s) of employee misconduct. This definition also includes incomplete investigations. An incomplete investigation is an investigation that cannot be thoroughly or properly completed due to any one of the following:
- lack of cooperation by the complainant or witness(es);
  - the absence of a critical interview, which was necessary to the investigation;
  - a determination that the physical evidence is not available; and/or
  - witness(es) statement is insufficient to permit adjudication of the complaint.
- 3.8 **SUSTAINED.** The investigation indicates there is sufficient evidence to clearly prove the allegation(s) of employee misconduct made in the complaint.
- 3.9 **UNFOUNDED.** The investigation indicates that the acts complained of did not occur.
- 4.0 **FUNCTIONAL RESPONSIBILITIES.** The Professional Standards Unit reports to the Administrative Services Division (ASD) Commander and also has the authority to report directly to the Chief Executive Officer. The ASD Commander, by function, also has the authority to report directly to the Chief of Police. {52.1.3, 52.2.2}

The Professional Standards Unit will be responsible for recording and registering all complaints against the Department and its employees. The Professional Standards Unit will review, assign, control, and oversee the investigation of complaints and will protect the confidentiality of all investigatory files and related records by maintaining them in a secure area. {52.1.2, 52.2.2}

The ASD Commander will:

- ensure that Internal Affairs and Citizen Complaints are thoroughly investigated in the appropriate time line;

- notify the MBTA Department of Organizational Diversity/Civil Rights concerning any allegation or complaint within which an internal MBTA violation of civil rights is alleged;
  - maintain a central file of all complaints received;
  - assume responsibility for the maintenance and security of all complaint investigation files and records;
  - maintain liaison with the appropriate prosecuting authority during investigations involving alleged employee criminal misconduct;
  - conduct regular audits of complaints to ascertain the need for changes in training or policy;
  - ensure that the Chief of Police is notified immediately, via telephone, text, email, or in person, concerning internal affairs incidents (e.g. the arrest of an employee, complaints against the Department, or an event involving an employee that may cause media inquiry, etc.); and {52.2.2}
  - review and analyze trends in numbers and types of complaints.
- 4.1 **COMPLAINT ANALYSIS SYSTEM.** One function of the Professional Standards Unit is to assure that consistent standards are maintained by reviewing records of complaints that may be filed against an Officer throughout his/her career. If a pattern is identified, an analysis will be conducted to determine if the employee's behavior warrants further action (e.g. training, counseling, etc.).
- 5.0 **COMPLAINT PROCESSING AND RECORDING.** The Department, being cognizant of its responsibilities to all citizens and its employees, will process, record, and investigate all complaints of alleged employee misconduct.
- 5.1 **CONFIDENTIALITY.** Prior to the completion of the investigation of either an Internal Affairs or Citizen's Complaint, information concerning such an investigation shall not be released unless authorized by the Chief of Police. The fact that a complaint was received and a departmental investigation is underway may be disclosed unless the ASD Commander determines that for security reasons it should remain confidential.
- 6.0 **CATEGORIES OF COMPLAINTS.** The Department has established guidelines regarding which categories of complaints will be handled and investigated by the Professional Standards Unit and which complaints will be referred to the appropriate Division Commander for investigation.
- 6.1 **INTERNAL AFFAIRS/ADMINISTRATIVE INVESTIGATIONS.** Investigations to be conducted by the Professional Standards Unit include, but are not limited to: {52.2.1 b, 52.2.2}
- criminal conduct; {52.2.1 b, 52.2.2}
  - untruthfulness; {52.2.1 b, 52.2.2}
  - domestic violence; {52.2.1 b, 52.2.2}
  - acts indicative of bias (e.g. racial, gender, etc.); {52.2.1 b, 52.2.2}

- divulging confidential police information to unauthorized sources; {52.2.1 b, 52.2.2}
- engaging in conduct, whether on or off duty, that discredits the Department, or the individual in his/her capacity as a Police Officer; and {52.2.1 b, 52.2.2}
- requests from the Chief of Police. {52.2.1 b, 52.2.2}

6.2 **CITIZEN COMPLAINTS/SUPERVISORY COMPLAINTS.** Complaints submitted by citizens alleging improper or unprofessional behavior related to the performance of their duties or sworn status or violations of Department policy will be investigated by the Professional Standards Unit, unless otherwise designated by the Chief of Police or his/her designee. They include, but are not limited to, the following offenses: {52.2.1 a}

- insubordination; {52.2.1 a}
- excessive force; {52.2.1 a}
- rudeness; {52.2.1 a}
- uniform violations; and {52.2.1 a}
- minor rule infractions. {52.2.1 a}

However, the nature, sensitivity, or severity of the offense may indicate a more appropriate assignment to the Professional Standards Unit for investigation. {52.2.1 a}

7.0 **RECEIPT OF COMPLAINTS BY TELEPHONE, EMAIL, OR IN PERSON.** When a Supervisor receives a complaint by telephone or email, arrangements will be made to provide the complainant with a copy of the Citizen's Complaint form by U.S. Mail or email. When the complainant informs the Supervisor that he/she desires to file a complaint, the Supervisor will ask him/her, in private, to describe the complaint. The complainant will then be provided an [Internal Affairs/Citizen Complaint form](#) to fill out. The Supervisor will facilitate the process and provide assistance as necessary. If requested, the complainant will be given a blank Internal Affairs/Citizen Complaint Form to fill out and sign on his/her own at a later time that is convenient for them. The forms will include the language that it is signed under the pains and penalties of perjury.

The completed complaint form will be forwarded to the Office of Professional Standards via email at [professionalstandards@mbta.com](mailto:professionalstandards@mbta.com) or by placing the completed form in an envelope clearly marked Professional Standards and placed in the Administrative Mail Box located in the report writing room. In both cases an email will be sent to [professionalstandards@mbta.com](mailto:professionalstandards@mbta.com) containing the following information:

- name, address, phone number, and email address of person making complaint;
- location, date, and time of the incident;
- Officers involved; and
- nature of the complaint.

- 8.0 **LOGGING AND PROCESSING COMPLAINTS.** All complaints against employees, including complaints filed by mail or electronically, will be processed as outlined in Section 7.0 of this Chapter.

The Professional Standards Unit will:

- review all complaints received;
- complete the necessary entry into BlueTeam for each Internal Affairs/Citizen Complaint Form or Blue Team entry received; and
- notify the complainant in writing that the complaint has been received. {52.2.4 a}

- 9.0 **INVESTIGATION OF COMPLAINTS.** All complaint investigations, including anonymous complaints must be conducted thoroughly and objectively. Every appropriate investigative technique and method may be employed consistent with legal requirements and concern for the individual rights of the accused employee. All complaints require a finding. If the employee resigns or the complaint is withdrawn, the investigator will note that fact in his/her report but will still be required to conclude the investigation based on the information available. {52.1.1, 52.2.8}

- 9.1 **COMPLAINT REVIEW.** The ASD Commander will review the complaint and assign it to the Professional Standards Unit as indicated by the nature of the complaint.

- 9.2 **CRIMINAL COMPLAINT.** Whenever, an employee is accused of committing a criminal act, whether on duty or off duty, he/she will notify their Unit, Section, Shift Lieutenant/Supervisor who will immediately notify a member of the Professional Standards Unit and the appropriate Division Commander, who will notify the Chief of Police through the chain of command. {52.1.3, 52.2.2}

An employee who may have been involved as either a participant or witness to the alleged incident being investigated will submit, upon request, a written report concerning his/her actions and observations to the Professional Standards Unit.

After reviewing the results of the completed investigation, the Professional Standards Unit will indicate, in writing, recommendation(s). The investigative reports, with recommendation(s), will be forwarded to the ASD Commander forthwith. The file must contain the following: {52.2.8}

- a statement of the allegations made by the complainant;
- a statement of the situation as described by the employee involved and/or witness employees;
- a conclusion and statement of what occurred based upon the Professional Standards Unit's analysis of the supporting evidence; and {52.2.8}
- a recommended finding in one of the following classifications: Exonerated, Not Sustained, Sustained, or Unfounded.

- 10.0 **FORMAL INTERVIEW.** In the interest of organizational integrity and fairness, when an Internal Affairs investigation requires that an employee be brought in for a formal interview, he/she will be issued a written statement that will include the allegations against the employee, and the employee's rights and responsibilities. {52.2.5}

All formal interviews will be conducted in accordance with the following procedures:

- 10.1 At the time of the interview, the interviewee under investigation should be afforded all rights guaranteed under the United States Constitution, the Massachusetts Declaration of Rights, [Carney v. Springfield 403 Mass. 604](#), and any other applicable constitutional or statutory rights. If the employee could infer that his responses may result in discipline against him/her, he/she shall be notified that they have the right to consult with a union representative and to have him/her present during questioning. The Department will afford an opportunity for the employee to consult with counsel and/or a union representative before being questioned concerning a serious violation of rules and procedures, provided that the interview is not unduly delayed. In any case, the interview may not be postponed for purpose of counsel. {25.1.1 a-e}
  - 10.2 The questioning will not be overly long. Reasonable respites will be allowed. Time will also be provided for personal necessities, meals, telephone calls and rest periods as are reasonably necessary.
  - 10.3 The complete interview of the employee will be recorded in some manner. There will be no "off-the-record" questions. All requests for recesses during the questioning will be recorded.
- 11.0 **PROHIBITION OF CONTACT WITH COMPLAINANT/WITNESS.** An employee against whom a complaint has been made shall not contact the complainant/witness or attempt, directly or indirectly, by threat, appeal, persuasion, or the payment or promise of money or other things of value, to secure the withdrawal or abandonment of the complaint. Such actions are prohibited and shall be dealt with very strictly by the Department. An employee against whom a complaint has been made shall not conduct any CORI or Registry of Motor Vehicle inquiries involving the complainant.
- 12.0 **EXAMINATIONS.** Upon orders of the Chief of Police or his/her designee, an employee may be compelled to submit to a medical or laboratory examination, at the Department's expense. This examination must be specifically directed and narrowly related to a particular Internal Affairs investigation being conducted by the Department. {52.2.6 a}
- An employee may also be compelled to be photographed, to participate in a lineup to be viewed by witnesses or complainants for the purpose of identifying an employee accused of misconduct, and/or be compelled to submit a financial disclosure statement as part of an internal investigation provided such statement is material to the investigation. {52.2.6 b, c, d}
- Examinations may also include workplace searches. The agency reserves the right to exercise searches of storage/clothing lockers, desks, file cabinets, computers and electronic messaging systems. Such submissions and/or examinations will only be conducted in a manner that is consistent with applicable federal, state, case law, and administrative decisions.
- 12.1 **DETECTION OF DECEPTION.** If necessary, when instruments for the detection of deception are used in any internal affairs investigation, these instruments will be used only by trained and certified personnel who have graduated from an institution providing training for this purpose. These instruments will be used and in accordance with all applicable federal, state, case law and administrative decisions. {52.2.6 e}
- 13.0 **INVESTIGATION REVIEW PROCESS.** The ASD Commander will review the completed investigation and indicate, in writing, whether or not he/she concurs with the Professional Standards Unit's finding and recommendation. The investigative report, with the recommenda-

tion(s), will be forwarded through the chain of command to the Chief of Police for appropriate action.

13.1 The employee and the complainant will be notified, in writing, of the disposition of the complaint. {52.1.5 c, 52.2.4c}

14.0 **DEADLINES/PROCESS.** All investigations pursuant to this chapter will be completed by the Professional Standards Unit within thirty (30) days of initiation unless extenuating circumstances exist. Initial contact with the complainant by the Professional Standards Unit will be made within five (5) days of the complaint being made. In all such investigations, after the thirty (30) day initial time period, extensions will be allowed provided status reports are submitted to the ASD Commander. {52.2.3}

14.1 If an investigation arising from a citizen complaint is still pending at the end of forty-five (45) days, the complainant will be notified stating that the investigation is continuing, and estimating when the investigation will be completed. {52.2.4 b}

14.2 A decision on the complaint will be made by the Chief of Police based on one of the following classifications: Exonerated, Not Sustained, Sustained, or Unfounded.

14.3 The employee will be notified, in writing, of the disposition of the complaint.

14.4 The ASD Commander will prepare a written response to the complainant. The response will be signed by the Chief of Police and will apprise the complainant of the results of the investigation. {52.2.4 c}

14.5 If the complaint is SUSTAINED, disciplinary action as appropriate, consistent with policies and procedures on progressive discipline as outlined in this manual, may be initiated.

14.6 If the allegation was true, but the action complained about was not inconsistent with established policies, rules, or procedures, the Department will review its policy to determine what changes need to be made so as to provide clearer guidelines to personnel and prevent a recurrence of the type of action complained about.

14.6.1 The Professional Standards Unit will specify in their report which policy, rule, or procedure was the subject of the complaint and when applicable, will include a draft policy revision for review.

14.6.2 The appropriate Division Commander will review the suggested policy revision for concurrence and forward it in accordance with the Department's policy review process.

15.0 **DISCIPLINARY RECORDS.** In the event disciplinary action is taken, a record of same will be placed in the employee's Personnel File and attached to the IAPro investigation file, in conformance with Massachusetts General Law (MGL), [Chapter 149, § 52C](#). {26.1.8}

16.0 **APPEAL PROCESS.** If an employee wishes to appeal the disciplinary action imposed, he/she may file a signed, written grievance through the employee's bargaining unit in accordance with the respective collective bargaining agreement. {25.1.1 a-e}

16.1 All disciplinary hearings against an Officer will be held in compliance with MGL, [Chapter 31](#), §§ 41-45. {25.1.1 a-e}



Employees may also exercise their right to appeal disciplinary actions (e.g. suspension, discharge, or transfer) to the Civil Service Commission. {25.1.1 a-e}

- 17.0 **FILES.** A central file of internal investigation complaints will be maintained electronically in IAPro, and secured and treated as confidential investigative files. Hardcopies of these files are kept secured in the Records Room which has limited access. The ASD Commander will assume responsibility for all Internal Affairs and Professional Standards investigation files. {52.1.2, 82.3.5}
- 18.0 **MONITORING AND EVALUATION.** The system of processing complaints against employees will be monitored in the following manner:
- 18.1 **ANNUAL STATISTICAL SUMMARY.** The ASD Commander will prepare a quarterly and annual summary of complaint statistics (both Internal Affairs and Citizen Complaints); indicating the number of complaints filed, by type of complaint, the outcome of the investigations undertaken, and by outcome classification. This information will be forwarded through the chain of command to the Chief of Police and published on a Chief's Memo to Department employees and the public at the discretion of the Chief of Police. {52.1.5}

Section 4.0 revised 2/08  
All sections revised 6/09  
Sections 4.0, 6.1, 9.2, 12.0, 15.0, 15.1, 15.5, 19.1 revised 5/12  
Section 15.0 revised 4/24/2013  
Section 4.0 revised 10/7/2015  
Sections 4.0, 7.0, 8.0, 9.1, 9.2, 10.0, 14.0, 15.0, 18.0, 19.1 revised 5/16  
Sections 3.2, 4.0, 6.2, 7.0-9.0, 13.0, 14.0, 14.6.1, 14.6.2 revised 8/16

## **EXHIBIT 5**

# MBTA TRANSIT POLICE DEPARTMENT TABLE OF ORGANIZATION

