
 Cambridge Police Department	POLICY & PROCEDURES		No. 210
	Subject/Title: Sexual Harassment		
	Issuing Authority: 	Review Date: March 30, 2010	Issue Date: April 30, 2010
	Robert C. Haas Police Commissioner	Effective Date: May 4, 2010	Rescinds:
References/ Attachments: City of Cambridge Sexual Harassment Policy - Reissued 11/08 & M.G.L. c. 153B.	Accreditation Standards: 26.1.3		

I. PURPOSE:

All members of the police department have a right to be free from any form of unlawful harassment. Individuals who are victimized by sexual harassment have a variety of federal and state statutory remedies available to them, including filing a complaint with an administrative agency like the EEOC or the MCAD, or in either state or federal court. The City Manager, along with the administration of the police department, developed this policy to familiarize department employees with applicable legal guidelines. This policy provides victims of harassment with a clear procedure for making the employer aware of the problem. Likewise, this policy outlines how supervisors are to respond to complaints of sexual harassment, how these matters will be investigated and handled by the department.

II. MISSION STATEMENT REGARDING HARASSMENT:

The Cambridge Police Department is committed to promoting a safe, comfortable, and appropriate work environment for all employees. To that end, the Department will protect the rights of all employees from sexual harassment by providing setting clear guidelines for behavior in the workplace, by requiring thorough and careful investigation of claims of sexual harassment, by encouraging early intervention to prevent situations from escalating, and by refusing to tolerate sexual harassment or retaliation in any form.

III. SEXUAL HARASSMENT POLICY:¹

- A. Scope of the Policy:** The policy and procedures established herein extend to all persons employed by the Cambridge Police Department. This policy is adopted and fashioned after the policy and procedures that have been adopted for all employees of the City of Cambridge.²

- B. Sexual Harassment Policy:** The City of Cambridge expressly prohibits any form of sexual harassment among its employees. Allegations of sexual harassment will be vigorously investigated. Violations of this policy will result in disciplinary actions up to and including termination from employment. Employees may make complaints of sexual harassment without fear of reprisal, and confidentiality will be maintained to the maximum extent possible.

Sexual harassment is unlawful in any workplace within the Commonwealth, in accordance with M.G.L. c. 151B, § 3A. Further, it is also unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint of sexual harassment.

NOTE: This policy also pertains to those firms and individuals who are contracted to perform work for the City of Cambridge or who serve in some voluntary capacity. The remedies available for incidents involving individuals not employed by the City of Cambridge may be different and will be decided on a case-by-case basis.

- C. Supervisory Responsibilities:** All persons having supervisory responsibilities over other employees have an affirmative responsibility to create an atmosphere free of sexual harassment. Supervisors are also responsible for taking corrective action consistent with City policy and procedures as soon as they become aware of objectionable activity. If a supervisor is unsure of what action to take, he/she should seek assistance or guidance from their Superintendent, Deputy Superintendent, or the Legal Advisor. Further, all supervisory personnel have the responsibility to consult the complaint procedures that have been established for the City of Cambridge when conducting such investigations.

¹ CALEA Std.: **26.1.3** – *A written directive prohibits sexual and other forms of unlawful harassment in the work place and provides a means by which harassment can be reported, including a means by which it can be reported if the offending party is in the complainant’s chain of command.*

² Refer to City of Cambridge Sexual Harassment Policy (Reissued 11/08)

IV. SEXUAL HARASSMENT WITHIN THE WORK PLACE:

- A. General Considerations:** The City of Cambridge expects that each and every employee will respect the rights of his/her co-workers in order to promote a comfortable and harassment-free work environment. To achieve this level of mutual respect and understanding, employees are encouraged to let fellow employees know when certain conduct or activity is offensive to them and/or leads to uncomfortable working conditions. Once an employee is made aware that the conduct or activity is offensive or has created an uncomfortable working condition for another employee, such conduct or activity should cease.
- B. Sexual Harassment Defined:** The term "sexual harassment," as defined by M.G.L. c. 151B, § 1(18) shall mean sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
1. Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or a basis for employment decisions (including but not limited to hiring, firing, promotions, compensation, work schedules, etc.); or
 2. Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, humiliating, or sexually offensive work environment; or
 3. Discrimination is on the basis of sex.
- C. Explanation of Sexual Harassment:** Sexual harassment is unwelcome verbal or physical contact of a sexual nature that impacts on the conditions of employment. There are two general categories of sexual harassment:
1. ***"Quid pro quo harassment:"*** This type of sexual harassment occurs when the harassment is used by the offending individual as the basis for employment decisions, which may have a negative impact upon the victim. Some examples of this would include the following:
 - a. Demanding sexual favors accompanied by direct or overt threats concerning one's job security, performance evaluation, promotion, salary increases, increased benefits, assignments, or continued employment.
 - b. Engaging in reprisals (not granting promotions, assigning undesirable tasks, making negative statements about the victim's personal or work conduct, etc.), as a result of an individual's refusal to engage in social/sexual behavior

2. ***“Hostile Work Environment:”*** The other form of sexual harassment occurs when unwelcome sexual conduct has the purpose or effect of unreasonably interfering with the employee's work performance or of creating an intimidating, hostile, or offensive working environment. Behaviors that can contribute to a hostile workplace include, but are not limited to, the following:
- a. Contact with any sexual part of a coworker's body (e.g., touching, patting or pinching).
 - b. Touching any non-sexual part of the body (e.g., shoulder, etc.) after that person has verbally or otherwise indicated that such touching is unwelcome.
 - c. Verbal harassment or abuse; e.g., referring to or calling a person an endearing, demeaning or sexualized term, or making reference to a person's physical characteristic (e.g., pregnancy) when that person has verbally or in writing indicated to the harasser or the department he/she does not wish to be addressed or referred to in that manner.
 - d. Making sexually-oriented comments, jokes, innuendoes, and other offensive statements.
 - e. Displaying sexually suggestive pictures, objects, cartoons, posters, or pornographic materials (note that this includes locker rooms).
 - f. Refusing to take action or to enforce disciplinary measures against a person who has been sexually harassing another staff member or otherwise condoning such behavior.
 - g. Continuing to ask a person to socialize after work hours when that person has verbally indicated no interest in such activities.
 - h. Subtle pressure for sexual activities, e.g., continuing to write suggestive notes or letters after being informed they are unwelcome.
 - i. Situations where one employee may create a hostile or intimidating work environment for another employee.
 - j. Leering (i.e., prolonged staring) at a person's body, commenting on any traditionally sexual part of a person's body, whistling or cat calls.
 - k. Language of a sexual nature in another's presence, or conduct of a sexual nature, even if not directed to the individual, once it is known that he/she objects. This would include such things, but not be limited to; sexual epithets, jokes, written or oral references to sexual conduct, gossip

regarding one's sex life, comments about an individual's body comments about an individual's sexual activity, deficiencies, or prowess.

1. Inquiries into a coworker's sexual experiences or discussion of one's own sexual activities, after it is known that the individual does not welcome such inquiries or discussions.

D. Scope of Sexual Harassment: Sexual harassment is not, by definition, limited to prohibited conduct by a male employee toward a female employee, or by a supervisor towards one of lower rank. Sexual harassment may take many forms:

1. A man or a woman may be the victim of sexual harassment, and a woman or a man may be the harasser.
2. The harasser does not have to be the victim's supervisor. He/she may also be an agent of the supervisor, a supervisory employee who does not supervise the victim, a non-supervisory employee (co-worker), or, in some circumstances, a non-employee.
3. Sexual harassment may occur between individuals of the same gender and same sexual orientation.
4. The victim does not have to be the person to whom the unwelcome sexual conduct is directed. He/she may also be someone who is affected by such conduct when it is directed toward another person. For example, the sexual harassment of one female (or male) employee may create an intimidating, hostile, or offensive working environment for another female (or male) co-worker or unreasonably interfere with the co-worker's work performance.
5. Sexual harassment does not depend on the victim having suffered an actual economic injury as a result of the harasser's conduct. For example, improper sexual advances that do not result in the loss of a promotion by the victim or the discharge of the victim may, nonetheless, constitute sexual harassment where such conduct does unreasonably interfere with the victim's work or create a harmful or offensive work environment. The belief that such interference occurred must be objectively reasonable.
6. The objectionable activity does not have to take place during working hours.

V. COMPLAINT PROCEDURES:

- A. Reporting Sexual Harassment:** Employees are strongly encouraged to report any incident of sexual harassment immediately so that it may be addressed promptly. Employees are encouraged to report the harassment to their immediate supervisor if they feel comfortable doing so. If the complaint is about an individual's supervisor, the matter may be brought to the attention of any member of the supervisory staff or the next person in the chain of command. It is unlawful to retaliate against an employee for filing a sexual harassment complaint or for cooperating in the investigation of such a complaint.

While employees are encouraged to report incidents of sexual harassment to their supervisor or other individuals within the Police Department, they have the right to bring such complaints directly to the Human Resources Department at City Hall (Telephone number: (617) 349-4335). An employee may contact the Sexual Harassment Coordinator at any City department to lodge a complaint, including but not limited to, the Women's Commission, the Affirmative Action Director, the Personnel Department, or the Human Rights Commission.

Further, an employee may bypass all City departments and bring a complaint directly to the Massachusetts Commission Against Discrimination (MCAD) or the Equal Employment Opportunity Commission (EEOC) at either one of the following addresses:

1. Massachusetts Commission Against Discrimination (MCAD)
One Ashburton Place, Sixth Floor
Boston, MA 02108
Telephone: (617) 727-3990
2. Equal Employment Opportunity Commission (EEOC)
John F. Kennedy Federal Building
Government Center, Room 475
Boston, MA 02203
Telephone: (617) 565-3200

- B. Initial Investigative Steps:** When supervisory personnel become aware of reported or suspected sexual harassment in the work place, it shall be their responsibility to report the allegation to the Police Commissioner or, in his absence, the appropriate designated officer-in-charge, to ensure that such complaints are properly and fully investigated. If the Police Commissioner or other supervisory person who would normally be notified of such complaints is implicated in the complaint, the matter should be referred to a another City

agency, such as the Women’s Commission, the Affirmative Action Director, the Human Rights Commission, or the City’s Personnel Department immediately.³

- C. Reassurance to Individuals Reporting Sexual Harassment:** Supervisory personnel receiving a complaint of sexual harassment will assure the person(s) reporting such an incident that they will be protected from any form of retaliation for filing a good faith complaint under this policy, or for assisting in a complaint investigation.
- D. Confidentiality of Complaints:** Supervisory personnel receiving a complaint of sexual harassment shall explain to the person filing the report that the complaint, whether formal or informal, will be handled in confidence to the fullest extent possible. Because complaints need to be investigated, complete confidentiality is not always possible. The Department will strive to limit disclosure of the complaint to only those individuals who “need to know.”
- E. Supervisory Personnel Responsibilities:** Once a supervisor is made aware of a situation that may constitute an incident or pattern of sexual harassment, it shall be the responsibility of that supervisor to report the matter directly to the appropriate department head or in his/her absence, the designated alternate representative. If possible, the supervisor being notified of a sexual harassment incident shall do as follows:
1. Encourage the alleged victim of sexual harassment and any witnesses to fully disclose all the facts known to them about the incident.
 2. Explain to the alleged victim or any witnesses to the sexual harassment that they will be protected from any form of retaliation against them for filing a good faith complaint under this policy or assisting in a complaint investigation.
 3. Explain to the alleged victim and/or any witnesses to the sexual harassment that the sexual harassment complaint and investigation will be disclosed only to those individuals who “need to know” in order to investigate the complaint.
 4. Document all investigative efforts and interviews in an internal administrative memorandum that is to be directed to the attention of the Police Commissioner.

³ Refer to Page 3-4 of the City of Cambridge Sexual Harassment Policy (Reissued 11/08).

5. Work to assure that no further occurrence of sexual harassment takes place and that the alleged victim suffers no form of retaliation from either the accused or other individuals with knowledge of the investigation.

F. Responsibilities of the Department Head: It shall be the responsibility of the Police Commissioner to promulgate policies and procedures that are designed to eliminate any form of harassment in the workplace. Further, when an incident of sexual harassment is brought to the attention of the Police Commissioner or his designated representative, all such complaints will be fully investigated under the direction of that office. The Police Commissioner shall also have the following responsibilities:

1. Directly supervise the investigation of any complaint alleging sexual harassment.
2. Ensure that all investigation efforts and findings are made part of an administrative report.
3. Determine whether it is necessary to submit a report to the appropriate governing boards and/or commissions that have direct involvement with those persons involved as to the existence of such complaints, and the findings of the associated investigations.
4. Ensure that disciplinary action is taken when an investigation establishes that there is sufficient basis for the complaint and that disciplinary action is warranted.
5. Offer counseling assistance to the victims of sexual harassment.
6. Take action to protect the victims and witnesses of sexual harassment complaints from any further occurrence of harassment or retaliation.
7. Strive to create an atmosphere in the workplace that makes it clear to all employees that discrimination or harassment of any kind will not be tolerated under any circumstances.

VI. SEXUAL HARASSMENT COORDINATION TEAM:⁴

A. Establishment of Sexual Harassment Coordination Team: In keeping with the City of Cambridge’s Sexual Harassment Policy, the Police Commissioner has established a Sexual Harassment Coordination Team. This team is composed of members of the department who made a commitment to be available for department employees who have concerns about unwelcome sexual comments or conduct, or who are seeking confidential guidance. This team will be comprised of the following personnel:

1. Member of the Command Staff (Deputy Superintendent or higher) who will be designated as the department’s “Sexual Harassment Coordinator”;⁵ and
2. Members of the department who have volunteered to make themselves available and accessible to other members of the department to discuss any issue related to sexual harassment.

B. Responsibilities of the Sexual Harassment Coordination Team: Each member of the department’s Sexual Harassment Coordination Team has committed to being accessible to fellow members of the department to discuss any concerns they may have regarding sexual harassment issues and/or hostile treatment within the workplace. In keeping with the City of Cambridge’s Sexual Harassment Policy, there are basically two levels of intervention:⁶

1. *Informal Resolution:* Generally speaking, informal resolution is appropriate where a member of the department is simply seeking advice about a concern relative to the conduct of one employee or group of employees toward another. It is often difficult for individuals to have this conversation, and they may feel partly responsible for the disturbing behavior they have experienced or observed. The Sexual Harassment Coordination Team will to be supportive to the employee seeking advice, and when appropriate, give advice that is consistent with the department’s standards of conduct and the City’s Sexual Harassment Policy.
 - a. The objective of this approach is to resolve growing concerns as quickly as possible. At no time will an employee be deterred from pursuing a formal complaint.

⁴ Refer to Page 3 of the City of Cambridge’s Sexual Harassment Policy

⁵ Refer to Page 3 of the City of Cambridge’s Sexual Harassment Policy

⁶ Refer to Page 4 of the City of Cambridge’s Sexual Harassment Policy

- b. In fact, if an employee wishes to file a formal complaint, it will be the responsibility of a Sexual Harassment Coordinator team member to assist an employee with the formal complaint process.
2. *Formal Complaint:* When a member of the Sexual Harassment Team is approached by another member of the department who feels that he/she has been the victim of sexual harassment, it is the responsibility of the Sexual Harassment Team member to counsel that employee as to his/her rights with respect to filing a complaint (refer to **Section VII.** of this directive):
 - a. If the employee wishes to file a formal complaint, the Sexual Harassment Team member will assist the employee with the complaint process.
 - b. The Sexual Harassment Team member will confirm with the Sexual Harassment Coordinator on any pending complaints or issues that involve allegations of sexual harassment.
3. *Informal Consultation & Advice:* In addition to taking an active role in the “Informal Resolution” and “Formal Complaint” processes, members of the Sexual Harassment Coordination Team have agreed to make themselves available to all department employees to discuss any concerns that may arise concerning possible sexual harassment in the workplace. To that end, members of the Sexual Harassment Coordination Team agree to the following the responsibilities:
 - a. An employee might want to talk about a situation that has made them feel uncomfortable or uneasy. It may prove to be beneficial for these employees to approach someone who will listen to their concerns without judgment. Members of the coordination team may offer advice that can lead to an informal resolution of the situation without more formal action.
 - b. Unless the reported sexual harassment represents a serious transgression of the City’s and department’s policy, members of the team agree to hold informal contacts with complaining employees in confidence. If the team member feels the situation is serious enough to warrant further intervention on the part of the department, the team member should encourage the reporting party to file a formal report. At the very least, the team member will advise the reporting party of his or her responsibility to confer with the Sexual Harassment Coordinator.
 - c. To advance the Department’s commitment to a harassment free workplace, Sexual Harassment Team Members will approach individuals

whom they believe are experiencing sexual harassment in the workplace. Team members may also approach members of the department who might be acting inappropriately and caution them that they might be violating the City and/or department's Sexual Harassment Policy.

C. Responsibilities of the Sexual Harassment Coordinator: The Sexual Harassment Coordinator shall have the following duties and responsibilities:

1. Be available to all employees in order to receive any allegations of sexual harassment or hostile working conditions. The Sexual Harassment Coordinator will adhere to the protocols established in this directive and the City of Cambridge's Sexual Harassment Policy.
2. Be accessible to members of the Sexual Harassment Coordination Team to confer with them and advise them on the appropriate action to take in response to alleged sexual harassment.
3. Hold periodic meetings with members of the Coordination Team to review the status of ongoing or potential sexual harassment claims or investigations, and to update them on any changes with respect to legal and/or procedural changes.
4. Identify training opportunities that might be beneficial to members of the Coordination Team, supervisory staff of the department, or to the department as a whole.
5. Routinely confer with the Affirmative Action Director of the City on issues relative sexual harassment.
6. Routinely confer with the Police Commissioner on matters relative to sexual harassment, particularly as it relates to modifying this directive, identifying patterns of concern, providing updates on pending investigations, and consulting on matters that might be part of a formal investigative process.
7. The Sexual Harassment Coordinator will serve as part of the Police Commissioner's Sexual Harassment Evaluation Team (refer to **Section VII. C.** of this directive).

VII. INVESTIGATIVE PROCEDURES:

- A. Investigation of Complaints:** The Office of the Police Commissioner shall directly supervise the investigation of any complaint of sexual harassment in the Police Department. At his discretion, the Police Commissioner may either assign supervisory personnel to conduct the actual investigation, or elect to conduct the investigation through the Professional Standards Unit. Under no circumstances may an individual who has been identified as an alleged harasser or implicated in a complaint be involved, officially or unofficially, in conducting the investigation of the claim. Investigations of sexual harassment shall be handled in the following fashion:
1. Allegations of sexual harassment should be investigated thoroughly and fairly, without bias or premature judgment.
 2. All investigations should include interviews with all the parties involved that may include co-workers and former employees who may have knowledge of the situation.
 3. The investigator should request access to relevant portions of an employee's personnel files for the purpose of identifying any relevant evidence. When such a request is made, the appropriate department head will make a determination as to what records may be considered relevant.
 4. Interviews of witnesses should be conducted separately and in a confidential and safe location (free of distractions, interruptions, or interference).
 5. While conducting the interviews of the reporting party and potential witnesses to the complaint, the investigator should do the following:
 - a. Explain his/her role in the process and describe the goal of the initial interview.
 - b. Ask objective questions about events (when, what, who).
 - c. Use appropriate language at all times.
 - d. Acknowledge any concerns expressed by the employees being interviewed and assure them that their concerns are taken seriously.
 - e. Let the employees being interviewed know that their rights will be protected.
 - f. Be aware of his/her non-verbal communication (i.e., body language, facial expressions, and other mannerisms).

- g. Explain how the investigation will proceed, and make sure that there is an opportunity for the individual to provide additional information in the future that may be helpful to the investigation.
 - h. If possible, ascertain what type of relief or remedy the victim is seeking.
6. While conducting the interviews of the reporting parties and potential witnesses, the investigator should avoid or not do the following:
- a. Do not minimize the seriousness of the concern or the incidents being reported.
 - b. Do not ask unnecessary or intrusive questions. If a particularly sensitive question must be asked to further the investigation, explain why it has been asked, if possible.
 - c. Do not use inappropriate language or humor, particularly around sexual issues.
 - d. Do not blame, attempt to assess blame, or question the judgment of the person being interviewed.
 - e. Do not provide excuses for, or rationalization around, the Behavior that is the subject of the complaint.
 - f. Avoid having the victim or the accused meet with one another or to confront one another during the course of the investigation.

B. Reporting Procedures: All investigative findings shall be fully documented in an internal administrative memorandum directed to the attention of the appropriate department head.

1. Investigative reports shall provide a thorough and complete overview of the investigative efforts taken.
2. All interviews relative to the investigation shall be fully described within the report.
3. Any evidence or supporting documentation that is relevant to the investigation shall be made part of the report.
4. Once the investigation has been concluded, the investigator shall incorporate his/her findings within a separate section of the report.

5. The investigator will make a recommendation as to what actions should be taken, if any, based on the findings of his/her investigation.

C. Sexual Harassment Evaluation Team: The Police Commissioner will establish a Sexual Harassment Evaluation Team for the purpose of reviewing status of sexual harassment investigations or complaints. The team's objective is to determine the appropriate course of action to take in response to any allegations or suspicions of sexual harassment in the workplace. Further, the team will coordinate the department's response to such allegations and/or suspicions, while maintaining the confidentiality of the persons involved. The Sexual Harassment Evaluation Team will consist of the following members of the department:

1. Police Commissioner
2. Division Commander
3. HR/Budget/Planning Director
4. Professional Standards Unit Commander
5. Sexual Harassment Coordinator

C. Disposition: Upon completion of an investigation of alleged sexual harassment, the appropriate department head will review the facts presented in the investigation, including the investigator's findings and recommendations.

1. If the evidence demonstrates that the accused has committed an incident of or engaged in a pattern of sexual harassment, the employees responsible for such conduct shall be subject to disciplinary action, as established by the policies and procedures of the appropriate department's disciplinary system.
 - a. Copies of the investigative report, its findings, and a record of disciplinary action shall be made part of the offending employee's personnel file.
 - b. Any counseling sessions regarding future disciplinary action shall be made part of the offending employee's personnel file.
2. If there is insufficient evidence to support disciplinary action against an employee, but the employee has been found to have engaged in questionable behavior, the employee will be counseled regarding this policy and advised as to the consequences of any future violations.
 - a. A report of the counseling session with an employee shall be placed in that individual's personnel file.

- b. The report shall contain an overview of the counseling session, along with any other relevant documentation.
3. If the investigation does reveal that the complaint was not made in good faith or that an employee provided false information regarding the complaint, disciplinary action may be taken against the individual who filed the complaint or who gave the false information.
 - a. Any disciplinary action taken in this regard will be placed in the offending employee's personnel file.
 - b. A report exonerating the falsely accused employee shall also be made part of that employee's personnel file.
 2. In the event that the complaint is not substantiated, no disciplinary action will be taken. The employer, however, will maintain a record, separate from the employee's personnel file, to document the existence and investigation of the complaint.

D. Notification to the Personnel Department: In all cases where there has been an allegation of sexual harassment, it shall be the responsibility of the Police Commissioner to make a full report to the Director of the Personnel Department as to the nature and outcome of such investigations. Notification to the Director of the Personnel Department during the course of the investigative procedure shall be at the sole discretion of the Police Commissioner.

E. Possible Sanctions for Violation of this Policy: Any employee found to have engaged in sexual harassment in violation of this policy will be subject to disciplinary action that may include suspension or termination from employment.

1. Retaliation against an individual who has complained about sexual harassment or who has cooperated in the investigation of a sexual harassment complaint is a serious violation of this policy and the law. In such instances, the Department will seek disciplinary action against the offending employee, most likely discharge from employment.

VIII. GENERAL GUIDELINES FOR SUPERVISORS:

- A. Purpose of Investigative Guidelines:** The guidelines outlined within the following sections of this policy will describe the actions a supervisor should typically take when responding to a sexual harassment complaint. Supervisors should appreciate that each situation will have its own unique set of circumstances. When conducting an investigation of alleged sexual harassment, the supervisor should strive to conduct a complete, impartial and thorough investigation. Simultaneously, supervisors must also be sensitive to the needs of the person(s) who may have brought forward such a complaint.
- B. Initial Receipt of a Complaint:** Typically, when a supervisor is made aware of a sexual harassment complaint, he/she should promptly begin the investigation by interviewing the employee reporting the incident. This interview should be done in as sympathetic and confidential a manner as possible, but in a manner that will yield a true, accurate, and complete account. Ask the employee to identify those possible witnesses who can corroborate the incident or who may have experienced similar behavior. It is important to gather as much concrete information relative to the complaint as possible at this stage of the investigation.
- C. Notifications:** To make the administration of the department aware of a potential sexual harassment complaint, the supervisor should immediately notify the Police Commissioner. If the Police Commissioner is implicated in the complaint, the supervisor should either notify the City's Affirmative Action Director, or the Director of the City's Personnel Department. Prior to taking the investigation any further, the Police Commissioner and/or his designee will should take the following factors into consideration:
1. Whether it is appropriate to notify the Director of the City's Personnel Department. If the Director of the Personnel Department is not to be notified at the onset of the investigation, at what point would it be appropriate to make such notifications.
 2. Whether legal counsel (Legal Advisor and/or City Solicitor's Office) should be consulted prior to launching any investigative effort to ensure that the rights of the parties involved are adequately protected. Likewise, legal advice should be sought to ensure that commencing an investigation is proper and appropriate based upon the nature of the complaint. Typically, this decision should be made in consultation with the Director of the City's Personnel Department.
 3. Based upon the gravity of the complaint and an assessment the threat of further incidents of harassment, Police Commissioner and/or his designee will determine whether any immediate remedial steps or administrative action is

required to protect the victim or witnesses involved. Consultation with the Legal Advisor and/or City Solicitor's Office should occur before taking any action against the accused employee.

4. The Police Commissioner and/or his designee will determine who will conduct the investigation. Once again, it is imperative that the supervisor assigned to conduct the investigation has not been implicated in the incident either officially or unofficially. Likewise, the supervisor assigned to investigate the allegations should not be a witness.
5. Prior to speaking with the person accused of engaging in sexual harassment, the Police Commissioner and/or his designee will consider what precautions need to be taken to ensure that the accused person's rights are not jeopardized or violated. Once again, this may be a question that is better assessed in consultation with either the Director of the Personnel Department or the Legal Advisor and/or City Solicitor's Office (depending upon which is most appropriate given the circumstances of the case).
6. Prior to actually commencing an investigation, the department head should consider the appropriate sequence of the investigative steps to be taken, such as:
 - a. Whether it is appropriate to re-interview the reporting party.
 - b. Whether it would be more prudent to interview any potential witnesses who may be able to substantiate or contradict the reporting employee's complaint, prior to speaking with the person who has been implicated or accused of sexual harassment.
 - c. When speaking with someone accused of sexual harassment, the interviewer must ensure that the individual has been fully informed of the nature of the complaint. Further, as a matter of course, the accused employee must be told that no retaliatory action will be tolerated against either the reporting party or persons who may be cooperating in the investigation.
 - d. If The Police Commissioner has ultimate responsibility for briefing the assigned investigator on the investigative steps that are to be taken, as well as providing for adequate oversight of the investigation.

D. General Investigative Considerations: It is imperative that all sexual harassment complaints are fully investigated, and it is important to examine the evidence in view of the "totality of the circumstances." Whether conduct constitutes sexual harassment depends upon "*how a reasonable person in the same or similar circumstances would react to the conduct.*" While the alleged

victim's perception is important, it is not the only consideration. Some factors that the investigator may need to consider to reach a conclusion includes:

1. *Number and frequency of encounters:* The number of incidents and the time span between them is important. Conduct may seem less severe when it happens once, but may become more serious when repeated often and with persistence. Where the alleged conduct falls under the definition of “quid pro quo” sexual harassment, a single incident can constitute improper sexual harassment.
2. *Apparent Intent of the Harasser:* The question to be asked is what reasonable people would have meant had they acted in a similar manner. Also important is whether the behavior was directed at the victim or simply overheard or seen. It is important to note, however, that an individual may violate the sexual harassment laws even if that was not their intent.
3. *Relationship of the Two Employees:* Supervisors are expected to maintain a higher level of conduct than other employees. What may be permissible comments or behavior from a co-worker may be inappropriate from supervisory personnel, and may be more serious and more threatening because of the power and control a supervisor may exert over subordinate employees. Also, investigators should consider the nature of the interpersonal relationship between the people involved - do they generally get along well, have they had an ongoing feud for some time, were they involved romantically?
4. *Victim's Provocation:* The behavior of the victim should be considered, but not given undue weight. Blaming the victim for causing the harassment is a common pattern that should be avoided. However, if the receiving employee intentionally does provoke or elicit such behavior, then it loses its “unwelcome” connotation.
5. *Response of the Victim:* It is reasonable to expect that a victim of sexual harassment will object if the behavior is mild and not terribly severe (i.e., jokes or teasing). However, this factor should be carefully weighed since many individuals are uncomfortable expressing their distaste for the offending behavior, especially when the offender is a supervisor or a well-liked co-worker.
6. *Effect on the Victim:* Assess the consequences of the harassing behavior in terms of embarrassment, humiliation, physical injury, demotion, and denial of promotion, assignments, work hours, or other benefits. Remember, if there has been tangible damage such as a poor performance review, demotion, or a poor personnel record, this situation should be rectified before the complaint is considered complete.

7. *Review of the Records:* Investigators are encouraged to review the personnel records of both parties involved, especially when the allegation involves a supervisor. It is essential to determine whether a history of friction exists between the two parties. The employee's records should be reviewed with regard to supervisory ratings, performance reviews, promotions or pass-over for promotions, transfers, raises, and disciplinary actions. The supervisor's records should be reviewed to determine problems either with other employees, previous allegations of misconduct, or other factors that would tend to verify the employee's claim.

E. Taking the Appropriate Action: Once the investigation has been completed, the Police Commissioner and/or his designee will attempt to bring the matter to some closure. Before making any decisions, the Police Commissioner and/or his designee will consult with either the Director of the City's Personnel Department or the City Solicitor's Office (depending who may be more appropriate) to discuss the case in its entirety, and to discuss how the investigation may appropriately brought to conclusion. Consultation is particularly imperative if the disciplinary action is being considered as a result of a substantiated investigation.

One of the most difficult situations arises when the complaint is inconclusive. Failing to take action against the offending employee can expose the City to substantial liability, especially in the case of an offending supervisor. On the other hand, imposing discipline on the employee without sufficient cause is unfair, creates morale problems, and can also expose the City to liability.

True cases of one employee's word against another are rare. With few exceptions, a thorough investigation will reveal witnesses to the same or similar behavior on the part of the accused, or identify other victims. The investigator should be careful not to assume innocence on the part of the alleged harasser simply because the complaint cannot be substantiated with verifiable proof. In inconclusive cases, the Department will warn the accused employee that it considers the allegations serious, and that although facts are disputed, such conduct is forbidden and will not be tolerated. The complaint should be fully documented so that any future occurrences can be assessed in the appropriate context.

F. Follow-up: It is important to follow-up on a periodic and regular basis, particularly with the victim to make sure the harassing behavior has stopped, that retaliation is not occurring, and that the employees are working together productively. After a harassment complaint, it often takes some time for the interpersonal relationships among all the employees to return to normal, especially between the accused and accuser. Staying in close communication with the work group during this time will benefit everyone.

- G. Other Forms of Harassment:** Depending on the circumstances, harassment may constitute a crime. See, e.g., M.G.L. c. 265, §§ 43 (stalking) 43A (criminal harassment), and M.G.L. c. 269, § 14A (annoying phone calls). Workplace sexual harassment that rises to the level of criminal behavior will be investigated in accordance with these guidelines.