

Committee Report

REGULAR CALENDAR

January 28, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Municipal and County Government to
which was referred HB 334-LOCAL,**

**AN ACT relative to disposition of certain municipal
records. Having considered the same, report the same
with the following amendment, and the recommendation
that the bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Kevin Pratt

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Municipal and County Government
Bill Number:	HB 334-LOCAL
Title:	relative to disposition of certain municipal records.
Date:	January 28, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-0061h

STATEMENT OF INTENT

As amended this bill requires that municipal police non-criminal internal affairs investigations be retained for a minimum of 20 years, clarifying the set amount of time before such records can be destroyed. This is in keeping with other municipal records.

Vote 17-2.

Rep. Kevin Pratt
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Municipal and County Government

HB 334-LOCAL, relative to disposition of certain municipal records. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kevin Pratt for Municipal and County Government. This bill requires that municipal police non-criminal internal affairs investigations be retained for a minimum of 20 years, clarifying the set amount of time before such records can be destroyed. This is in keeping with other municipal records. **Vote 17-2.**

HB 334

OTP/A

2019-0061h

This bill HB 334 relative to disposition of certain municipal records requires a minimum of 20 years. This makes clear a set amount of time before police non-criminal internal affairs investigations records are destroyed. This is in keeping with other municipal records.

Kevin Pratt

COMMITTEE REPORT

COMMITTEE: _____

BILL NUMBER: HB 334

TITLE: Relative of disposition of certain
Municipal Records.

DATE: 1/23/2019 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
00614

STATEMENT OF INTENT:

THIS BILL HB 334 Relative To disposition of
certain municipal records requires a minimum
of 20 years. This makes clear a set amount of
time before police non-criminal internal affairs
investigations records are destroyed. This is
in keeping with other municipal records.

COMMITTEE VOTE: 17-2

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. [Signature]
For the Committee

Rep. Keans, Straf. 23
January 22, 2019
2019-0061h
06/05

Amendment to HB 334-LOCAL

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Disposition of Municipal Records; Disposition and Retention Schedule. Amend RSA 33-A:3-a,
4 CVIII to read as follows:

5 CVIII. Police, non-criminal-internal affairs investigations: ~~[as required by attorney general~~
6 ~~and union contract and town personnel rules]~~ *retirement or termination of subject officer plus*
7 *20 years, except that the municipality shall follow the retention period for non-criminal*
8 *internal affairs investigations set forth in a union or collective bargaining agreement*
9 *already in effect on July 1, 2019.*

10 2 Effective Date. This act shall take effect July 1, 2019.

Voting Sheets



2019 SESSION

Municipal and County Government

Bill #: HB³³⁴344 Motion: OTF-A AM #: 006/h Exec Session Date: 1/23/19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
	1		
Carson, Clyde J. Chairman	17		
Tatro, Bruce L. Vice Chairman	1		
Porter, Marjorie A.	2		
Treleven, Susan GS	3		
Gilman, Julie D.	4		
Josephson, Timothy Clerk	5		
Meader, David R.	6		
Dargie, Paul P.	7		
Maggiore, Jim V.	8		
Mombourquette, Donna M.	9		
Stavis, Laurel	10		
Belanger, James P.	11		
Migliore, Vincent Paul	12		
Abramson, Max	13		
Dolan, Tom			
Kittredge, Derek MacMillen	14		
MacDonald, John T.	0	1	
Perreault, Mona		2	
Piemonte, Tony	15		
Pratt, Kevin M.	16		
TOTAL VOTE:	17	2	

Rep. Keans, Straf. 23
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Hearing Minutes

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON HB 334-LOCAL

BILL TITLE: relative to disposition of certain municipal records.

DATE: January 15, 2019

LOB ROOM: 301 **Time Public Hearing Called to Order:** 11:30 a.m.

Time Adjourned: 12:02 p.m.

Committee Members: Reps. Carson, Tatro, Josephson, Treleaven, Gilman, Meader, Dargie, Maggiore, Mombourquette, Stavis, Belanger, Migliore, Abramson, Dolan, Kittredge, MacDonald, Perreault, Piemonte and Pratt

Bill Sponsors:

Rep. Keans

Rep. Berch

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

1. **Rep. Keans - Prime Sponsor**

- a. Would simply add 20 years to record retention to bring it in line with city employees
- b. Has a proposed amendment that would make it 20 years after termination or employment/retirement
- c. Q - Abramson: intent of bill -- when a police officer retires, is this from their final retirement from all law enforcement or from their retirement from that police position (intent is for the time to start when they leave the police dept)
- d. Q - Dolan: is this locally enabled or is it a requirement for all? (state law, would take effect across the state) If this is passed, how would the records be retained and who would bear the cost? (not intended to be overwhelming and the same as any other city employee)
- e. Q - Belanger: Thinking about police officers who falsely accused in a case to be revealed years later, is twenty years long enough? Should it be longer? (perhaps) Would you support the records being retained until the death of the officer? (does not sound unreasonable)
- f. Q - Carson: Last term, we reduced city employees from 50 to ten years but it was killed by the Senate, so this would take another bite at the apple? (yes)
- g. Q - Tatro: there's nothing currently preventing law enforcement agencies from keeping them longer? (no)

2. * **Gilles Bissonnett - ACLU -- see written testimony**

- a. ACLU strongly supports this
- b. Current law gives law enforcement exceptional exceptions from record keeping. This would treat the police the same as any other municipal employees, that's it
- c. currently, under collective bargaining agreements, disciplinary actions can be purged after a shorter period of time and could also happen while the officer is still employed. Non-police municipal employees do not have these same protections
- d. Very strong public policy rationale for record retention, purging documents breaks down public trust
- e. NOT saying that police departments are mismanaging personnel, internal investigations and records, but this provides a safeguard and helps police to show they are handling

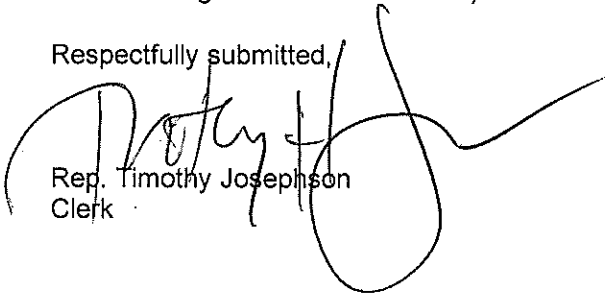
things by the book

- f. Police misconduct may not be revealed to the public for quite some time, or a systemic pattern may be revealed when looking at longer record retention
- g. Referring to Rep Abramson's previous question: This would refer to the end of the officer's employment at that specific department. No way for a PD to know if an officer has gone on to work elsewhere
- h. Currently, municipalities can store records longer if they want
- i. State law already mandates record retention so costs would be borne by municipalities but it's no different than current system
- j. Not Laurie's List
- k. Q - Belanger: can these be stored electronically? (yes)
- l. Q - Abramson: would you be opposed to specifying that it was 20 years after the officer leaves the dept? (no, but it's understood already so if it makes it easier to understand then OK)
- m. Q - Carson: would this allow municipalities to hold them for longer than 20 years? (yes, no limit, but it establishes a minimum)
- n. Q - MacDonald: definition of non-criminal internal affairs vs. criminal internal affairs? (applies to all actions within their file) Would things like citizen complaints against police be in the file? (yes, those rules should apply to everyone)
- o. Q - Kittredge: non-judicial punishment in the military where the commander can take care of it and it will be erased from the file. Would avoid labeling a "scarlet letter" -- how do you feel about that? (only dealing with record retention, this is not a bill that publishes or publicizes the file, but only retains the record)

3. Margaret Byrnes - NH Municipal Association - no position

- a. Only concern is potential conflict between the law and already existing bargaining agreements
- b. To the extent that collective bargaining agreements, it may be counter to existing language
- c. Q - Migliorie: wouldn't the existing CBAs change? (no, state law that changes cannot change current CBAs)
- d. Q - Carson: contracts going forward would have to adhere to the law? (yes)
- e. Q - Abramson: wouldn't it be easier to make a law that all records going forward would be subject to this? (no, this would create ambiguity and create confusion and conflict between statute and CBAs)
- f. Q - Dolan: how does NHMA feel about unfunded mandates? In Londonderry last night, a warrant article is for record retention addition to the town hall. Cost of that addition is \$350k. What is the association's position on this? Should it come with state funding? (NHMA has a strong stance against unfunded mandates, but with regards to this particular statute, there is a possibility for municipalities to incur some costs, but it's already established that municipalities must retain records. Now, all records can be kept in an electronic format and we are not talking microfiche or actual files, but a smaller footprint)
- g. Q - Porter: records can be kept electronically? (yes, municipalities can free up space and do better to get records for citizens)

Respectfully submitted,


Rep. Timothy Josephson
Clerk

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see electronic copy

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 - g. Q - Porter: records can be kept electronically? (yes, municipalities can free up space and do better to get records for citizens)

Testimony

Amendment to HB 334

Amend RSA 33-A:3-a, CVIII as follows:

The municipal records identified below shall be retained, at a minimum, as follows:

CVIII. Police, non-criminal-internal affairs investigations: ~~as required by attorney general and union contract and town personnel rules.~~ retirement or termination of subject officer plus 20 years

police internal affairs and disciplinary documents subjected to the same retention standards as documents retained in the personnel files of all other municipal employees.

II. This Bill is Necessary to Ensure that Documents Implicating Police Misconduct are Retained.

Allowing internal affairs/disciplinary documents to be purged—even if the officer is not placed on the Laurie/EES list—damages public accountability.

First, complaint records in personnel files can be critical to establishing the existence of a pattern of allegations from civilians of particular misconduct. A good example of this is a recent audit that was done of the Salem Police Department. The auditor reviewed internal affairs documents and concluded, among other things, that the Department demonstrated a pattern of mismanaging internal investigations, ignoring or discouraging citizen complaints, failing to keep complete records of internal investigations, and violating Department policies regarding complaints and personnel issues. *See* Pages 17-25. As part of this investigation, the auditor determined that the Department's retention of internal affairs documents was incomplete. *See* Pages. 26-27.

Indeed, allegations of systemic misconduct by citizens may not surface for years; but, under many municipalities' purging policies, by the time a comprehensive investigation is commenced, the relevant information from officers' personnel files may have been destroyed. For example, in investigating the Chicago Police Department, the United States Department of Justice found that the provision requiring the destruction of disciplinary records "deprives CPD of important discipline and personnel documentation that will assist in monitoring historical patterns of misconduct." *See* United States Department of Justice Civil Rights Division, Investigation of the Chicago Police Department, at Page 50 (Jan. 13, 2017), *available at* <https://www.justice.gov/opa/file/925846/download>.

Second, such internal affairs/disciplinary documents should be retained for a significant period of time because it is possible for an officer to be placed on the EES/Laurie list based on a later reassessment of a prior incident; however, this information may be inappropriately purged under current collective bargaining agreements. In such a situation, a defendant would have a constitutional right to this potentially exculpatory information concerning the officer's credibility or truthfulness, yet this information may no longer exist in the officer's personnel file under these agreements. This would deprive the defendant of his or her due process rights.

III. Many Municipalities Outside of New Hampshire Provide Greater Protections By Retaining These Documents for a Longer Period of Time.

Many other police departments in major cities do not have similar personnel file purging policies. The Cincinnati, Los Angeles, and Pittsburgh police departments each maintain records during the officer's employment, plus an additional five years for Cincinnati, and an additional three years for Los Angeles and Pittsburgh (after which time Pittsburgh archives the information indefinitely). *See* Cincinnati Police Department Apr. 12, 2002 Memo. of Agreement ¶¶ 58(g), 59, 63 ("The City will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the CPD and for at least five years."); Los Angeles Police Department Consent Decree ¶¶ 41(g)-(h), 49 ("The City shall maintain all personally identifiable information about an officer included in TEAMS II during the officer's employment with the LAPD and for at least three years thereafter."); Pittsburgh Police Department Consent Decree ¶¶ 12(a), 44, 12(c) ("Data regarding an officer shall be maintained in the automated early warning system during that officer's employment with the PBP and for three (3) years after the officer leaves the PBP.").

For these reasons, the ACLU-NH support the proposed amendment to HB 334, and we respectfully urge members of this Committee to vote *ought to pass* on HB 334 as amended.

Amendment to HB 334

Amend RSA 33-A:3-a, CVIII as follows:

The municipal records identified below shall be retained, at a minimum, as follows:

CVIII. Police, non-criminal-internal affairs investigations: ~~as required by attorney general and union contract and town personnel rules.~~ **retirement or termination of subject officer plus 20 years**

TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 33-A DISPOSITION OF MUNICIPAL RECORDS

Section 33-A:3-a

33-A:3-a Disposition and Retention Schedule. –

The municipal records identified below shall be retained, at a minimum, as follows:

- I. Abatements: 5 years.
- II. Accounts receivable: until audited plus one year.
- III. Aerial photographs: permanently.
- IV. Airport inspections-annual: 3 years.
- V. Airport inspections-daily, including fuel storage and vehicles: 6 months.
- VI. Annual audit report: 10 years.
- VII. Annual reports, town warrants, meeting and deliberative session minutes in towns that have adopted official ballot voting: permanently.
- VIII. Archives: permanently.
- IX. Articles of agreement or incorporation: permanently.
- X. Bank deposit slips and statements: 6 years.
- XI. Blueprints-architectural: life of building.
- XII. Bonds and continuation certificates: expiration of bond plus 2 years.
- XIII. Budget committee-drafts: until superseded.
- XIV. Budgets: permanently.
- XV. Building permits-applications and approvals: permanently.
- XVI. Building permits-lapsed: permanently.
- XVII. Building permits-withdrawn, or denied: one year.
- XVIII. Capital projects and fixed assets that require accountability after completion: life of project or purchase.
- XIX. Cash receipt and disbursement book: 6 years after last entry, or until audited.
- XX. Checks: 6 years.
- XXI. Code enforcement specifications: permanently.
- XXII. Complaint log: expiration of appeal period.
- XXIII. Contracts-completed awards, including request for purchase, bids, and awards: life of project or purchase.
- XXIV. Contracts-unsuccessful bids: completion of project plus one year.
- XXV. Correspondence by and to municipality-administrative records: minimum of one year.
- XXVI. Correspondence by and to municipality-policy and program records: follow retention requirement for the record to which it refers.
- XXVII. Correspondence by and to municipality-transitory: retain as needed for reference.
- XXVIII. Current use applications and maps: until removed from current use plus 3 years.
- XXIX. Current use release: permanently.

- XXX. Deed grantee/grantor listing from registry, or copies of deeds: discard after being updated and replaced with a new document.
- XXXI. Deferred compensation plans: 7 years.
- XXXII. Underground facility damage prevention forms: 4 years.
- XXXIII. Dredge and fill permits: 4 years.
- XXXIV. Driveway permits and plans: permanently.
- XXXV. Easements awarded to municipality: permanently.
- XXXVI. Elections-federal elections: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 22 months after the election, whichever is longer.
- XXXVII. Elections-not federal: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 60 days after the election, whichever is longer.
- XXXVIII. Elections-challenge affidavits by the town clerk: until the contest is settled and all appeals have expired or 22 months after the election, whichever is longer.
- XXXIX. Elections-ward maps: until revised plus 1 year.
- XL. Emergency medical services run reports: 10 years.
- XLI. Equipment maintenance: life of equipment.
- XLII. Excavation tax warrant and book or list: permanently.
- XLIII. Federal form 1099s and W-2s: 7 years.
- XLIV. Federal form 941: 7 years.
- XLV. Federal form W-1: 4 years.
- XLVI. Fire calls/incident reports: 10 years.
- XLVII. Grants, supporting documentation: follow grantor's requirements.
- XLVIII. Grievances: expiration of appeal period.
- XLIX. Health-complaints: expiration of appeal period.
- L. Health-inspections: 3 years.
- LI. Health-service agreements with state agencies: term plus 7 years.
- LII. Health and human services case records including welfare applications: active plus 7 years.
- LIII. Inspections-bridges and dams: permanently.
- LIV. Insurance policies: permanently.
- LV. Intent to cut trees or bushes: 3 years.
- LVI. Intergovernmental agreements: end of agreement plus 3 years.
- LVII. Investigations-fire: permanently.
- LVIII. Invoice, assessors: permanently.
- LIX. Invoices and bills: until audited plus one year.
- LX. Job applications-successful: retirement or termination plus 20 years.
- LXI. Job applications-unsuccessful: current year plus 3 years.
- LXII. Labor-public employees labor relations board actions and decisions: permanently.
- LXIII. Labor union negotiations: permanently or until contract is replaced with a new contract.
- LXIV. Ledger and journal entry records: until audited plus one year.
- LXV. Legal actions against the municipality: permanently.
- LXVI. Library:
- (a) Registration cards: current year plus one year.
- (b) User records: not retained; confidential pursuant to RSA 201-D:11.
- LXVII. Licenses-all other except dog, marriage, health, and vital records: duration plus 1 year.
- LXVIII. Licenses-dog: current year plus one year.
- LXIX. Licenses-dog, rabies certificates: disposal once recorded.
- LXX. Licenses-health: current year plus 6 years.

- LXXI. Liens-federal liens upon personal property, other than IRS liens: permanently.
- LXXII. Liens-hospital liens: 6 years.
- LXXIII. Liens-IRS liens: one year after discharge.
- LXXIV. Liens-tax liens, state liens for support of children: until court order is lifted plus one year.
- LXXV. Liens-tax liens, state meals and rooms tax: until release plus one year.
- LXXVI. Liens-tax sale and record of lien: permanently.
- LXXVII. Liens-tax sales/liens redeemed report: permanently.
- LXXVIII. Liens-Uniform Commercial Code leases: lease term plus 4 years; purge all July 1, 2007.
- LXXIX. Liens-Uniform Commercial Code security agreements: 6 years; purge all July 1, 2007.
- LXXX. Meeting minutes, tape recordings: keep until written record is approved at meeting. As soon as minutes are approved, either reuse the tape or dispose of the tape.
- LXXXI. Minutes of boards and committees: permanently.
- LXXXII. Minutes of town meeting/council: permanently.
- LXXXIII. Minutes, selectmen's: permanently.
- LXXXIV. Motor vehicle-application for title: until audited plus one year.
- LXXXV. Motor vehicle-titles and voided titles: sent to state division of motor vehicles.
- LXXXVI. Motor vehicle permits-void and unused: until audited plus one year.
- LXXXVII. Motor vehicle permits and registrations-used: current year plus 3 years.
- LXXXVIII. Municipal agent daily log: until audited plus one year.
- LXXXIX. Notes, bonds, and municipal bond coupons-cancelled: until paid and audited plus one year.
- XC. Notes, bonds, and municipal bond coupon register: permanently.
- XCI. Oaths of office: term of office plus 3 years.
- XCII. Ordinances: permanently.
- XCIII. Payrolls: until audited plus one year.
- XCIV. Perambulations of town lines-copy kept by town and copy sent to secretary of state: permanently.
- XCV. Permits or licenses, pole: permanently.
- XCVI. Personnel files: retirement or termination plus 20 years.
- XCVII. Police, accident files-fatalities: 10 years.
- XCVIII. Police, accident files-hit and run: statute of limitations plus 5 years.
- XCIX. Police, accident files-injury: 6 years.
- C. Police, accident files-involving arrests: 6 years.
- CI. Police, accident files-involving municipality: 6 years.
- CII. Police, accident files-property damage: 6 years.
- CIII. Police, arrest reports: permanently.
- CIV. Police, calls for service/general service reports: 5 years.
- CV. Police, criminal-closed cases: statute of limitations plus 5 years.
- CVI. Police, criminal-open cases: statute of limitations plus 5 years.
- CVII. Police, motor vehicle violation paperwork: 3 years.
- CVIII. Police, non-criminal-internal affairs investigations: as required by attorney general and union contract and town personnel rules.
- CIX. Police, non-criminal-all other files: closure plus 3 years.
- CX. Police, pistol permit applications: expiration of permit plus one year.
- CXI. Property inventory: 5 years.
- CXII. Property record card: current and last prior reassessing cycle.
- CXIII. Property record map, assessors: until superceded.
- CXIV. Property tax exemption applications: transfer of property plus one year.
- CXV. Records management forms for transfer of records to storage: permanently.
- CXVI. Road and bridge construction and reconstruction, including highway complaint slips: 6 years.
- CXVII. Road layouts and discontinuances: permanently.

- CXVIII. Scenic roads: permanently.
- CXIX. School records: retained as provided under RSA 189:29-a.
- CXX. Septic plan approvals and plans: until replaced or removed.
- CXXI. Sewer system filtration study: permanently.
- CXXII. Sign inventory: 7 years.
- CXXIII. Site plan review: life of improvement plus 3 years.
- CXXIV. Site plan review-lapsed: until notified that planning board action and appeal time has expired plus one year.
- CXXV. Site plan review-withdrawn or not approved: appeal period plus one year.
- CXXVI. Special assessment (betterment of property): 20 years.
- CXXVII. Street acceptances: permanently.
- CXXVIII. Street signs, street lights and traffic lights-maintenance records: 10 years.
- CXXIX. Subdivision applications-lapsed: until notified that planning board action and appeal period has expired plus one year.
- CXXX. Subdivision applications-successful and final plan: permanently.
- CXXXI. Subdivision applications-withdrawn, or not approved: expiration of appeal period plus one year.
- CXXXII. Subdivision applications-working drafts prior to approval: expiration of appeal period.
- CXXXIII. Summary inventory of valuation of property: one year.
- CXXXIV. Tax maps: permanently.
- CXXXV. Tax receipts paid, including taxes on land use change, property, resident, sewer, special assessment, and yield tax on timber: 6 years.
- CXXXVI. Tax-deeded property file (including registered or certified receipts for notifying owners and mortgagees of intent to deed property): permanently.
- CXXXVII. Time cards: 4 years.
- CXXXVIII. Trust fund:
- (a) Minutes and quarterly reports, in paper or electronic format: permanently.
 - (b) Bank statements, in paper or electronic format: 6 years after audit.
- CXXXIX. Vehicle maintenance records: life of vehicle plus 2 years.
- CXL. Voter checklist-marked copy kept by town pursuant to RSA 659:102: 7 years.
- CXLI. Voter registration:
- (a) Forms, including absentee voter registration forms: until voter is removed from checklist plus 7 years.
 - (b) Same day, returned to undeclared status, form and report from statewide centralized voter registration database: 7 years.
 - (c)(1) Party change form: until voter is removed from checklist plus 7 years.
 - (2) List of undeclared voters from the statewide centralized voter registration database: 7 years.
 - (d) Forms, rejected, including absentee voter registration forms, and denial notifications: 7 years.
 - (e) Qualified voter affidavit: until voter is removed from checklist plus 7 years.
 - (f) Verifiable action of domicile document: until voter is removed from checklist plus 7 years.
 - (g) Overseas absentee registration affidavit: until voter is removed from checklist plus 7 years.
 - (h) Absentee ballot voter application form in the federal post card application format, for voters not previously on the checklist: until voter is removed from checklist plus 7 years.
 - (i) Absentee ballot affidavit envelope for federal post card applicants not previously on the checklist: until voter is removed from checklist plus 7 years.
 - (j) Notice of removal, 30-day notice: until voter is removed from checklist plus 7 years.
 - (k) Report of death: until voter is removed from checklist plus 7 years.
 - (l) Report of transfer: until voter is removed from checklist plus 7 years.
 - (m) Undeliverable mail or change of address notice from the United States Postal Service: until voter is removed from checklist plus 7 years.
- CXLII. Vouchers and treasurers receipts: until audited plus one year.

- CXLIII. Warrants-land use change, and book or list: permanently.
- CXLIV. Warrants-property tax, and lists: permanently.
- CXLV. Warrants-resident tax, and book or list: permanently.
- CXLVI. Warrants-town meeting: permanently.
- CXLVII. Warrants-treasurer: until audited plus one year.
- CXLVIII. Warrants-utility and betterment tax: permanently.
- CXLIX. Warrants-yield tax, and book or list: permanently.
- CL. Welfare department vouchers: 4 years.
- CLI. Work program files: current year plus 6 years.
- CLII. Writs: expiration of appeal period plus one year.
- CLIII. Zoning board of adjustment applications, decisions, and permits-unsuccessful: expiration of appeal period.
- CLIV. Intent to excavate: completion of reclamation plus 3 years.
- CLV. Election return forms, all elections: permanently.
- CLVI. Affidavits of religious exemption: until voter is removed from checklist plus 7 years.

Source. 2005, 187:3, eff. Aug. 29, 2005. 2006, 119:2-5, eff. May 12, 2006. 2010, 172:1-3, eff. Aug. 16, 2010; 191:1, eff. Aug. 20, 2010. 2012, 113:1, eff. May 31, 2012; 284:13, eff. Sept. 1, 2015. 2014, 319:1, eff. Sept. 30, 2014. 2015, 4:1, eff. July 4, 2015. 2017, 205:15, eff. Sept. 8, 2017. 2018, 247:1, 2, eff. Aug. 11, 2018.

2017 PROTOCOL FOR IDENTIFYING WITNESSES WITH POTENTIALLY EXCULPATORY EVIDENCE IN THEIR PERSONNEL FILES AND MAINTANENCE OF THE EXCULPATORY EVIDENCE SCHEDULE (“EES”)

I. The heads of all law enforcement and government agencies retain an on-going obligation to identify and disclose potentially exculpatory materials in their employees’ personnel files to the County Attorney in their jurisdiction and to the Attorney General or designee.

Given the protected status of the personnel files of government witnesses, it is imperative that agency heads remain diligent in disclosing to prosecutors any conduct by an employee that is documented in a personnel file that could be potentially exculpatory evidence in a criminal case. What constitutes exculpatory material is quite broad. For guidance in making this determination many of the types of conduct that have been found to be potentially exculpatory in case law are listed in Part III below.

The International Association of Chiefs of Police (IACP) developed a Model Brady Policy for law enforcement agencies which also provides many examples of *Brady* material and is consistent with this new policy. The Model Policy is attached to this memo.

II. Personnel files include all internal investigation files, pre-employment records, and all mental health records.

For purposes of this protocol, a personnel file includes materials from all of the following records: internal investigation materials, background and hiring documents¹, medical and all mental health records², and any other related materials regardless of where the materials are kept or how they are labeled by the employer. While it may be common practice for a variety of legitimate reasons to maintain these records in separate locations, the “personnel file,” as discussed in this protocol and in the case law, includes any potentially exculpatory material maintained by an employer.

~~The employer must maintain in personnel files all complaints against an employee that are pending investigation, are found not sustained (meaning the evidence is insufficient to determine whether the allegation is true or false) or are sustained (meaning~~

¹ While in most instances, background and hiring files document conduct that preceded employment in law enforcement which will not be relevant, courts in unique circumstances have held otherwise where the conduct involved credibility. Therefore, prosecutors in connection with a pending case may question a Chief or the officer and review such information to assess whether any pre-law enforcement conduct took place that warrants disclosure. For purposes of placement on the EES, only matters first arising after an individual became a law enforcement officer are relevant.

² Only instances of mental illness or instability that caused the law enforcement agency to take some affirmative action to suspend the officer as a disciplinary matter should be considered exculpatory. Any incident for which no disciplinary action was taken shall not be considered exculpatory evidence. For example, a directive to an officer to seek mental health treatment following a traumatic incident or event (on or off the job) does not result in the officer being included on the EES. Mental health treatment should not be stigmatized but instead, where appropriate, encouraged.

~~(the evidence proved the allegation true)~~. If that finding is later overturned and the complaint is determined to be unfounded or the officer is exonerated, the complaint and related investigatory documents may be removed. If a complaint is determined to be unfounded, or the officer is exonerated, the officer can be taken off the EES with the approval of the Attorney General or designee, and the records removed from the officer's personnel file.

III. Identification of Potentially Exculpatory Materials

The term "potentially exculpatory material" is not easily defined because it is subject to refinement and redefinition on a case by case basis in the state and federal courts. Whether a court would view any particular piece of information as potentially exculpatory evidence depends, to some extent, on the nature of the information in question, the officer's role in the investigation and trial, the nature of the case, and the recency or remoteness of the conduct. However, when making the initial determination to place an officer's name on the EES it will be without the refining lens of the facts of a particular case. Yet, the only guidance available is extracted from case law. Nevertheless, as a general proposition, information that falls within any of the following categories should be considered potentially exculpatory evidence:

- A deliberate lie during a court case, administrative hearing, other official proceeding, in a police report, or in an internal investigation;
- The falsification of records or evidence;
- Any criminal conduct;
- Egregious dereliction of duty (for example, an officer using his/her position as a police officer to gain a private advantage such as sexual favors or monetary gain; an officer misrepresenting that he/she was engaged in official duties on a particular date/time; or any other similar conduct that implicates an officer's character for truthfulness or disregard for constitutional rules and procedures, including *Miranda* procedures);
- Excessive use of force;³
- Mental illness or instability that caused the law enforcement agency to take some affirmative action to suspend the officer for evaluation or treatment as a disciplinary matter; a referral for counseling after being involved in a traumatic incident, or for some other reason, for which no disciplinary action was taken shall not result in placement on the EES.

³ Incidents of excessive use of force generally do not reflect on an officer's credibility, and thus, in the context of most criminal cases, would not be considered exculpatory material. However, in the context of a case in which a defendant raises a claim of aggressive conduct by the officer, such incidents would constitute exculpatory material, requiring disclosure.

The Telegraph

ACLU concerned about NPD contract

Officers will be able to have personnel files purged



Staff photo by Damien Fisher The Nashua Police Department headquarters.

NASHUA — Officers with the Nashua Police Department may soon have the ability to purge their own personnel files, even if there is incriminating material in those files, thanks to a new contract.

This pending change in the police contract alarms officials with the American Civil Liberties Union-New Hampshire. They sent a letter to Nashua officials Friday.

"The proposed agreement's provisions allowing for the purging of police personnel files are deeply problematic and must be eliminated," wrote Gilles Bissonnette, legal director for the ACLU-NH.

~~The new contract, if approved, would allow police officers to purge their files, even eliminating sustained complaints about their conduct.~~ While members of the Nashua Board of Aldermen are set to vote on the financial component of the contract in the coming weeks, the board is not expected to vote on the other provisions.

"Complaint records in personnel files can be critical to establishing the existence of a pattern of allegations from civilians of particular misconduct, which can be relevant to resolving credibility disputes between officers and civilians," Bissonnette wrote.

The contract would allow officers to request reviews of their files, and have items purged after a set time. Remedial training records and warning letters can be purged after five years, or three years after an optional review by the chief of police.

Records of suspension can be purged after seven years, or after five years after an optional review by the chief.

This purging schedule does not apply to officers on the New Hampshire Exculpatory Evidence Schedule, or EES. Under the proposed contract, those records stay in the file as long as the officer is on the EES.

The EES originates from the New Hampshire Supreme Court decision in *State vs. Laurie* from 1995. That ruling overturned Carl Laurie's murder conviction because prosecutors withheld knowledge that a key police witness had been disciplined for dishonesty.

Since 2004, police chiefs have been required to keep lists of officers who have been disciplined for disclosure to defense attorneys. Police chiefs must report officers who have:

- been found to lack credibility,
- used excessive force,
- failed to comply with legal procedures, or
- have exhibited mental illness or instability.

Nashua Corporation Counsel Steve Bolton said the new contract provision to purge records is the city's attempt to comply with the Attorney General's latest EES directives. This year, New Hampshire Attorney General Gordon MacDonald revised the rules to allow for police officers listed on the EES to appeal and get their records cleared.

"We're trying to follow the law as determined by the top law enforcement officer in New Hampshire," Bolton said.

Bissonnette disputes this, stating in his letter that Nashua's policy goes against the new EES guidelines.

Representatives with MacDonald's office declined to comment when contacted on Friday.

Nashua has 15 officers listed on the EES, though most of those officers are no longer with the department, Chief Andrew Lavoie said in a previous interview. Of the officers Lavoie reported under the EES directive, two are still working for Nashua. Under the law, police departments must continue to report the officers on the list even after they leave their

service.

Damien Fisher can be reached at 594-1245 or dfisher@nashuatelegraph.com or @Telegraph_DF.



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Devon Chaffee
Executive Director

- *Letter of Suspension: Purged after seven (7) years with the option that it can be reviewed/purged by the Chief of Police after five (5) years. **See EES below.*
- ***EES: In such cases where said documentation pertains to having been placed on the Exculpatory Evidence Schedule (EES), the rejected documentation will remain on the member's personnel file. If the member is taken off the EES, the purging of the documentation will follow the respective timeframes outlined above.*

The proposed agreement's provisions allowing for the purging of police personnel files are deeply problematic and must be eliminated, even in instances where the material to be purged does not warrant placement on the Exculpatory Evidence Schedule ("EES"). This is the case for at least five reasons.

First, law enforcement officers, unlike regular citizens, are professional court witnesses. This means that officers should be held to a higher standard than regular citizens. However, the proposed agreement's provisions allowing for purging of personnel files give law enforcement special privileges that normal citizens do not have with respect to their personnel files. It is important to note that the proposed agreement's purging policy allows for the permanent removal of sustained incidents in which an officer acted inappropriately.

Second, these special privileges in the form of personnel file purging can harm a defendant's due process rights, even if the information to be purged has not resulted in the officer being placed on the EES list. Whether information in an officer's personnel file is exculpatory and must be disclosed to a defendant is fact-specific and often depends on the facts in the specific criminal case. Thus, there is always a possibility that purged information could be relevant in a future criminal case, even if that officer is not placed on the EES list. Moreover, it is possible for an officer to be placed on the EES list based on a later reassessment of a prior incident; however, this information may be inappropriately purged under this proposed agreement. In such a situation, a defendant would have a constitutional right to this potentially exculpatory information concerning the officer's credibility or truthfulness, yet this information may no longer exist in the officer's personnel file under the proposed agreement. This would deprive the defendant of his or her due process rights. In short, allowing these personnel files to be forever purged creates too great a risk that a defendant may not obtain access to the information that he or she may need to defend themselves against an officer's allegations in court.

Third, allowing these records to be purged—even if the officer is not placed on the EES list—damages public accountability. Complaint records in personnel files can be critical to



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establishing the existence of a pattern of allegations from civilians of particular misconduct, which can be relevant to resolving credibility disputes between officers and civilians. Indeed, allegations of systemic misconduct by citizens may not surface for years; but, under this proposed purging policy, by the time a comprehensive investigation is commenced, the relevant information from officers' personnel files may have been destroyed. Furthermore, law enforcement agencies should retain disciplinary records for the purpose of a proactive early intervention system, which can assist in identifying officers with ongoing problems. For example, in investigating the Chicago Police Department, the United States Department of Justice found that the provision requiring the destruction of disciplinary records "deprives CPD of important discipline and personnel documentation that will assist in monitoring historical patterns of misconduct." See United States Department of Justice Civil Rights Division, Investigation of the Chicago Police Department, at Page 50 (Jan. 13, 2017), available at <https://www.justice.gov/opa/file/925846/download>.

Fourth, many other police departments in major cities do not have similar personnel file purging policies. The Cincinnati, Los Angeles, and Pittsburgh police departments each maintain records during the officer's employment, plus an additional five years for Cincinnati, and an additional three years for Los Angeles and Pittsburgh (after which time Pittsburgh archives the information indefinitely). See Cincinnati Police Department Apr. 12, 2002 Memo. of Agreement ¶¶ 58(g), 59, 63 ("The City will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the CPD and for at least five years.")¹; Los Angeles Police Department Consent Decree ¶¶ 41(g)-(h), 49 ("The City shall maintain all personally identifiable information about an officer included in TEAMS II during the officer's employment with the LAPD and for at least three years thereafter.")²; Pittsburgh Police Department Consent Decree ¶¶ 12(a), 44, 12(c) ("Data regarding an officer shall be maintained in the automated early warning system during that officer's employment with the PBP and for three (3) years after the officer leaves the PBP.")³.

Finally, this personnel purging policy conflicts with the Attorney's General's mandates concerning the maintenance of police officer personnel files. At the outset, the Attorney General's operative memoranda concerning the EES list dated March 21, 2017 and April 30, 2018 only govern placement and removal of an officer's name on the EES list; these memoranda do not require or authorize the removal of information in an officer's personnel file. To the contrary, the Protocol for Identifying Witnesses with Potentially Exculpatory Evidence in Their Personnel Files promulgated by the Attorney General's on March 21, 2017

¹ Available at <https://www.cincinnati-oh.gov/police/linkservid/EA1A2C00-DCB5-4212-8628197B6C923141/showMeta/0/>.

² Available at http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf.

³ Available at <https://www.clearinghouse.net/chDocs/public/PN-PA-0003-0002.pdf>.



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states clearly that “[t]he employer must maintain in personnel files all complaints against an employee that ... are sustained (meaning the evidence proved the allegation true).” See Attorney General Mar. 21, 2017 Memorandum, at Page 6 of document/Page 1 of Protocol (emphasis added), available at <https://www.doj.nh.gov/criminal/documents/exculpatory-evidence-20170321.pdf>. This includes sustained complaints regardless of whether they require the officer to be placed on the EES list. See also RSA 33-A:3-a, XCVI (stating that municipalities must retain “[p]olice, non-criminal-internal affairs investigations” “as required by attorney general and union contract and town personnel rules”) (emphasis added).⁴

For these reasons, we ask that the Budget Committee reject Article 6, Section C of the proposed collective bargaining agreement. Do not hesitate to contact me if you have any questions.

Very truly yours,

/s/ Gilles Bissonnette

Gilles Bissonnette
Legal Director

/s/ Robin Melone

Robin Melone, Esq.

cc: Members of the Nashua Budget Review Committee

- Alderman Richard A. Dowd, Chairman (dowdr@nashuanh.gov)
- Alderman-at-Large Lori Wilshire, Vice Chair (wilshirel@nashuanh.gov)
- Alderman-at-Large Michael B. O'Brien (obrienm@nashuanh.gov)
- Alderwoman-at-Large Shoshanna Kelly (kellys@nashuanh.gov)
- Alderman Jan Schmidt (schmidtj@nashuanh.gov)
- Alderman-at-Large Brian S. McCarthy (mccarthyb@nashuanh.gov)
- Alderman-at-Large David C. Tencza (tenczad@nashuanh.gov)

⁴ Law enforcement officers are given special privileges under Chapter 33-A—the Disposition of Municipal Records Act—with respect to how municipalities must retain employee personnel files. While municipalities must generally retain personnel files of their employees 50 years beyond the employee’s retirement or termination, see RSA 33-A:3-a, XCVI, police personnel records concerning internal affairs investigations must only be retained “as required by the attorney general and union contract and town personnel rules,” see RSA 33-A:3-a, CVIII.

https://www.unionleader.com/news/politics/local/report-blasts-salem-police-for-handling-of-officer-complaints-internal/article_a7b3323c-d6a1-5380-9b46-1f1114c5250e.html

Report blasts Salem police for handling of officer complaints, internal investigations

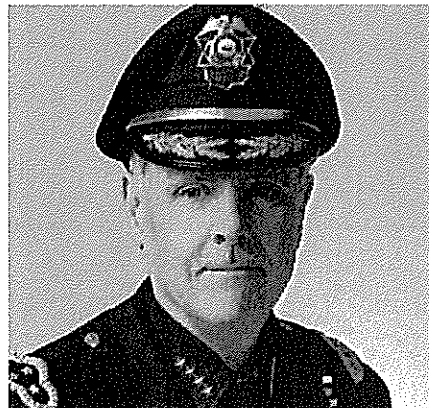
By RYAN LESSARD Union Leader Correspondent Nov 23, 2018



Salem Police Department



Embattled Salem chief settles suit against town over his suspension



SALEM – Salem Police Department demonstrated a pattern of mismanaging internal investigations, ignored or discouraged citizen complaints, failed to keep complete records of internal investigations and

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Salem Police Chief Paul Donovan

Download PDF

TO: Town of Salem, MA
 FROM: Paul Dillon, Chief of Police
 DATE: November 9, 2018
 SUBJECT: End Report Response

Introduction

I was provided the End Report, which was commissioned in the Spring of 2018, by Town Manager Christopher Dillon for my review and response. I was provided with only the substance of the report and not the full report. I was provided with only the substance of the report and not the full report. I was provided with only the substance of the report and not the full report.

The End Report consists of seven main parts: a short summary and findings, a short summary of the findings, a short summary of the findings, a short summary of the findings, a short summary of the findings, a short summary of the findings, and a short summary of the findings.

I have read the End Report and the summary findings. I have some disagreement with the findings in these documents. I am also disappointed with the lack of transparency and lack of opportunities for collaboration before and during the investigation.

However, in the interest of putting the Town of Salem back on track, I have agreed to work with everyone to implement changes to the administration and the day-to-day operations of the SPD as requested in the End Report. I have and will continue to discuss my full time and energy in the day-to-day operations of the police department.

I am and am willing to implement, in partnership with the Chief and our Town officials and employees, changes to the police department to better accommodate changes to our law and municipal government.

Summary of the 170-page report to include public input on our policy changes, additional training and education for SPD staff (payroll included), best practices review by a committee of senior staff and volunteer members, legal review, regular policy reviews and updates, an LA system in the PD if a community request and advisory board formed, and other changes of improvements to police, I anticipate greater citizen participation, more transparency in the process and improved city management for the Town. Collective Bargaining Agreement changes will require negotiation and agreement with the legal counsel.

I believe that the SPD culture is inclusive, collegial and respectful to those inside and outside the department. In my 27+ years at the SPD, I have seen best practices in other departments.

1

PTD End Response

Salem police chief announces resignation under cloud of critical audit, allegations of wrongdoing

MORE INFORMATION

More than \$275K paid out in settlements against Salem police since 2012

violated department policies regarding complaints and personnel issues, according to a town-commissioned audit released Friday.

The report also includes the allegation that some officers, including Police Chief Paul Donovan, worked outside details during their paid shifts.

Town Manager Christopher Dillon posted the redacted audit Friday morning on the town's website.

The 170-page report was authored by Kroll Inc., hired by the town via a lawyer earlier this year, and is based on the findings of an independent investigation led by Daniel Linskey, former superintendent-in-chief of the Boston Police Department.

The audit recommends a "complete overhaul" of the department's internal affairs program, as well as other changes to policies and procedures.

In a press release, Dillon states the town will contract with Municipal Resources Inc. to hire a civilian police administrator to help the department implement Kroll's recommendations.

"The men and women that work for the police department are dedicated and hardworking. I have met with them and they recognize improvements need to be made and will work with the civilian administrator to address the recommendations identified in the report," Dillon wrote in a statement.

Chief Donovan in a statement wrote that he had concerns about

how the audit was conducted but would work with the town and Dillon to implement changes to improve the police force.

"I have some disagreement with the allegations in (the audit). I am also disappointed with the lack of transparency and lack of opportunities for collaboration before and during the investigation," wrote Donovan.

"However, in the interest of putting the town first ... I am committed to work with everyone to implement changes in the administration and the day-to-day operations of the SPD as suggested in the Kroll Report."

Included in the the audit is a report dated Oct. 12 that focuses on the department's internal affairs program and a secondary report dated Sept. 19 that examines officers' time and attendance practices. The second report found some officers, including Donovan, were working outside details during their paid work shifts.

In his response to the report, Donovan said that current and previous town managers gave him permission to work the details because they were unable to grant him raises that would bring his salary in line with chiefs of similarly sized departments.

The audit also raised issues with the department's culture, which was a common theme in nearly every interview Kroll conducted. Concerns included "members of management who either ignore or even encourage an environment where there exists a complete disregard for the Town's authority."

That lack of regard for the town's authority started at the top. According to the report, Town Manager Dillon said Donovan would not respect his authority as his direct supervisor. Dillon said it became increasingly challenging to get answers to questions and Donovan began refusing to attend meetings altogether.

The rift between the two officials became apparent after Chief

Donovan filed two lawsuits against the town in recent months. One from August seeks to overturn a disciplinary action Dillon took against Donovan (a two-day suspension without pay), and it outlines a verbal argument the men had in July about the handling of a citizen complaint.

Donovan took issue with the report's accusation that he disregard's the town manager's authority.

"I have always carried out the town's directives and will continue to do so," he wrote, adding "If there is a misperception that I am 'unable and unwilling' to recognize the authority structure within the town, I want to correct that misperception through my words and actions going forward."

Kroll's review of the police department's policies and collective bargaining agreement found several deficiencies and areas that failed to meet accepted best practices. The collective bargaining agreement contained "some of the most restrictive language ever reviewed by Kroll," and "severely impacts" on the department's ability to effectively discipline officers, the report says.

The Kroll report recommends a legal review of the union contract and revision where needed. In particular, that contract dictates a narrow window of six months from the date of an incident that a complaint must be filed, or else the department is prohibited from investigating the case, the report says.

The union contract further sets a 10-day clock to complete an investigation, even though a corruption investigation might take months to gather evidence, according to the report.

Investigators found the department had no policy addressing how officers should respond to situations involving their friends or family. They also found Deputy Chief Robert Morin's role as union president for administrative staff to be a conflict of interest since he also oversees all internal affairs investigations

ICenter brawl

The report addresses the police response to a fight at the ICenter after a youth hockey game on Dec. 2, 2017, though a significant portion of this section was redacted. Here, it finds the Salem police internal investigation into citizen complaints violated internal policy and best practices. The report used strong language in its findings.

“Not only did this investigation not meet acceptable best practices, but these actions undermine the integrity of the Salem PD,” the report states. “Further, it is Kroll’s opinion that there was a significant failure by the department’s leadership in their accepting this investigation as a complete effort.”

Later in the report, under the section covering Kroll’s communication with people outside the department, it further addresses the internal investigation into the ICenter incident. It says Salem police initiated an “internal inquiry” that didn’t rise to the level of a formal internal affairs investigation and took less than 24 hours to find the complaint not sustained.

Kroll found that no one in the department tried to interview the complainant or their witnesses, and only began seeking testimony from witnesses who would support the officers’ version of events after “adverse” media coverage — a possible reference to a WBZ-TV report in April.

“This is a complete violation of the Salem PD complaint policy and can even appear to be negligent or retaliatory in nature,” the report states.

Police arrested assistant youth hockey coach Robert Andersen of Wilmington, Mass., on Dec. 2, 2017, after using a Taser on him multiple times. Several parents say Andersen was trying to mediate a fight between parents when the police arrested him. Police claimed he made a threatening motion toward an officer, failed to comply with orders and violently resisted arrest. They

claimed an officer was wounded in the process.

Andersen was charged with assaulting an officer and resisting arrest. His trial is set for May and he is being represented by former New Hampshire Attorney General Michael Delaney, who is with the McLane Middleton law firm. Donovan defended his department's handling of the case, writing that WBZ-TV's story was "one-sided and inciteful."

Incomplete records

The Salem Police Department's policy on IA record retention, dictated by the CBA, is possibly a violation of the state AG's regulations, according to the report.

Donovan told Linskey that he does not keep records of any internal investigations that result in a not sustained or an unfounded disposition. He said they get destroyed. Donovan said that's in

keeping with state guidance on Laurie List records, but Kroll disputes this, saying the state requires departments to keep both sustained and not-sustained records.

Kroll also states in its report that keeping the "not sustained records" is a good practice for picking up troubling patterns with problem officers.

In interviews, reviewers found contradicting statements between the top two heads of the agency. Donovan said he did not keep permanent files on internal investigations that include not sustained cases. Morin said that Donovan did keep those files.

Police complaints

One of the issues that triggered the audit was concern that the department repeatedly discouraged citizens from filing complaints.

In one instance, a citizen submitted a complaint directly to the town manager because the citizen didn't expect the department to investigate. Dillon asked the citizen to submit it in writing. The resident wrote the complaint and the town manager forwarded it to Donovan, but the chief declined to investigate. Instead, Donovan accused Dillon of violating the collective bargaining agreement by getting involved in the investigation, an assertion the Kroll report refutes.

The department's complaint form lists the town manager's office as one of the ways to file a complaint and the department's own policies state that complaints can be filed in person, by phone or in writing, the report notes.

After Chief Donovan refused to investigate the matter, it was referred to the Attorney General's office, which only determines if a crime was committed. The matter was referred back to Salem police for administrative review, which the Kroll report says never happened. The officer's name and details of the case are redacted.

"These actions confirmed what the complainant alleged, which was that no investigation would be conducted," the report concludes.

It goes on to say the refusal to investigate the matter was a failure of the complainant's rights to due process, and failed the officers entitled to an investigation whereby their names might have been cleared. Failing to investigate the complaint opened the town and its officers to unnecessary liability, it says.

The Kroll report also found the official complaint form the department required to be intimidating, with language warning of criminal charges if any statements are later deemed to be untrue. Individuals with complaints were directed to go to police headquarters to file that form, which some found intimidating.

But that appears to have been the point, according to the report.



with several not sustained and unfounded complaints, allegedly provided by happenstance during the records collection process, despite the department's belief that these files were purged. Kroll disagrees with this assertion, as the rule stipulates that all sustained and not sustained complaints should be kept for the entirety of an employee's career.

However, there is seemingly confusion within the senior administration of the department, as Chief Donovan informed Kroll that the department does not maintain not sustained or unfounded complaints. However, Deputy Chief Morin stated that the files are, in fact, stored in a file cabinet in the chief's office. As a result of the discrepancy, Kroll re-interviewed Chief Donovan and asked if such a cabinet existed in his office. Chief Donovan stated that he did not retain the files. Therefore, if the files are not retained, then the department is in violation of Salem PD GO 65-7, as well as the New Hampshire Attorney General's guidelines. [REDACTED]

Recommendation #4: Kroll recommends that the Salem PD update its current recordkeeping system for IA investigative files in consultation with best practices and as directed by the Attorney General's Office.

Finding #5: The deputy chief in charge of IA investigations should not be union president, as it is a conflict of interest to oversee IA investigations and represent the interests of union members.

Recommendation #5: Kroll recommends that the deputy chief be responsible for assisting with contract negotiations for the department but be prohibited from serving as union president.

Finding #6: As detailed in Kroll's secondary report relative to time and attendance concerns within the Salem PD, members of the administration are also known to work detail assignments, often during regular working hours. It is Kroll's opinion that these detail assignments may adversely impact the supervisors' ability to properly oversee the department's IA program.

[REDACTED]

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Bill as Introduced

HB 334-LOCAL - AS INTRODUCED

2019 SESSION

19-0611
06/08

HOUSE BILL

334-LOCAL

AN ACT relative to disposition of certain municipal records.

SPONSORS: Rep. Keans, Straf. 23; Rep. Berch, Ches. 1

COMMITTEE: Municipal and County Government

ANALYSIS

This bill changes the length of time certain police records are required to be retained.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to disposition of certain municipal records.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Disposition of Municipal Records; Disposition and Retention Schedule. Amend RSA 33-A:3-a,
2 CVIII to read as follows:

3 CVIII. Police, non-criminal-internal affairs investigations: as required by attorney general
4 [~~and union contract and town personnel rules~~] *plus 20 years.*

5 2 Effective Date. This act shall take effect 60 days after its passage.