

**ANNE  
ARUNDEL  
COUNTY**  
M A R Y L A N D  
**Office of the County Executive**  
**STEUART PITTMAN**

August 12, 2024

Honorable Anthony G. Brown,  
Attorney General of Maryland  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

*Re: Request for Opinion*

Dear Attorney General Brown:

This is a request for the opinion of the Attorney General on the following question:

1) Under the Police Accountability Act of 2021 and the regulations found in COMAR Title 12, Subtitle 4, Chapter 9, is a complaint of discrimination involving a police officer but not involving a member of the public to be handled pursuant to the procedure adopted by the agency head of the of the County's law enforcement agency or according to County procedures applicable to claims of discrimination involving any County employee?

A copy of an opinion of the County Attorney on this issue is attached hereto.

Sincerely,

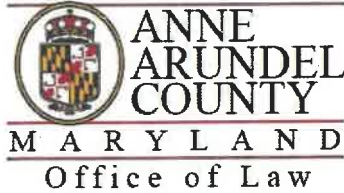


Christine Anderson  
Acting County Executive

cc: Gregory Swain, Anne Arundel County Attorney

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countyexecutive@aacounty.org



*Gregory J. Swain, County Attorney*

## MEMORANDUM

### Attorney-Client/Work-Product Privileged Communication

**To:** Amal Awad, Police Chief

**CC:** Christine M. Anderson, Chief Administrative Officer

**From:** Gregory J. Swain, County Attorney /s/

**Date:** July 22, 2024

**Subject:** Police Discipline – K-01 Complaints

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**Question:** Whether complaints alleging discrimination by a uniformed police officer in violation of Policy K-01 of the Employee Relations Manual but not involving a member of the public are to be processed per Police Department internal policy or County K-01 policy applicable to all County employees?

**Answer:** Complaints alleging discrimination by a uniformed police officer in violation of County Policy K-01 of the Employee Relations Manual that does not involve a member of the public should be processed per the K-01 policy as provided by County law, regardless of whether that discrimination also violates Department internal policy, unless the Chief Administrative Officer decides on a different form of investigation. A police officer, however, is entitled to two things under State law a non-police officer employee is not: that any discipline imposed must be per the disciplinary Matrix maintained by the Maryland Police Training and Standards Commission; and secondly, if the disciplinary decision on the K-01 complaint is appealed, the officer is entitled to have that appeal heard by a statutory administrative trial board.

### **Analysis.**

#### **The Police Department Process.**

Initially, it is noted that the 2021 Police Accountability Act that replaced the Law

Enforcement Officer's Bill of Rights does not address police discipline for internal matters and only applies to complaints of police misconduct involving a member of the public and a police officer. *See Public Safety* Article, § 3-101(g); § 3-102(a)(3); § 3-103(a); § 3-104(d). This means a complaint of discrimination involving a member of the public must be processed under the Police Accountability Act, but a complaint of discrimination arising out of employment and not involving a member of the public falls outside the scope of the Act. *Id.*

In lieu of the process for discipline under the Police Accountability Act, regulations provide that complaints of misconduct by a police officer that do not involve a member of the public shall be handled under the procedures established by the police agency who employs the officer.<sup>1</sup> COMAR 12.04.09.01(B). The Anne Arundel County Police Department has adopted a series of "Index Codes" that establish departmental rules for uniformed officers and a disciplinary process for violation of those rules by a police officer that does not involve a member of the public. The process set out in Index Codes 303 and 303.2 provides for an investigation by the agency and the application of discipline according to the Disciplinary Matrix established by the Maryland Police Training & Standards Commission (COMAR 12.04.10.04). The officer has the right to appeal to an administrative trial board if the violation alleged is sustained by the agency and the officer does not agree to accept the discipline imposed by the Chief of Police.

#### **K-01 Process.**

The K-01 policy against discrimination in County employment is not an internal Police Department policy, but is a County policy that applies to all County employees. *See County Code*, § 6-1-102; K-01 § (I). Anne Arundel County Police officers are first and foremost County employees, then secondarily employees of the Police Department subject to State and local law as well as internal regulations of the Police Department. As of June 8, 2024, Bill 21-24, signed into law on April 24, 2024, requires that a:

claim of discrimination arising out of County employment shall be initiated, investigated, and resolved pursuant to Article 6 of this Code and the Employee Relations Manual.

*See County Code*, § 1-9-401(b). The County's prohibition against discrimination includes prohibiting retaliation against an employee who makes a report of harassment or discrimination. K-01, ¶ IV(C)(4). The K-01 policy sets out the process for addressing complaints of discrimination by County employees arising out of the workplace. *See K-01*, § IV ("Procedure"). This section provides:

The County will make a decision as to who will investigate the alleged incident of harassment or discrimination. The investigation may be

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<sup>1</sup> COMAR 12.04.09.04(B) provides "A law enforcement agency shall establish written procedures for handling complaints of police officer misconduct that do not involve members of the public." It is noted that there is no express statutory basis for this directive, as the Police Accountability Act does not address internal complaints. For the purposes of discrimination, the County policy in K-01 would comprise the written procedure requirement. {00458214.DOCX; 1}

conducted by the Office of Personnel, the EEO Director, and/or the applicable Departmental designee.

K-01, § IV(A)(3). K-01 provides for an investigation, personal interviews, and the preparation of a report as to whether the allegations are substantiated. K-01 further provides:

If the allegations are proved, the County will issue remedial action and disciplinary action as appropriate, up to and including termination of employment.

K-01, § IV(A)(11). For a K-01 violation generally, if the complaint is sustained and discipline is imposed, the employee may appeal that determination to the Personnel Board, or may elect to go to binding arbitration in lieu of the Personnel Board. § 521(a)(2); Code § 6-4-113. The employee also has a further right to appeal any decision of the Personnel Board to the Circuit Court for Anne Arundel County. Charter, § 521(b).

#### **Interaction of Police Process and K-01 Process.**

Anti-discrimination laws operate at the federal, state and local level. As noted, discrimination in employment is prohibited under § 6-1-102 of the County Code and State law. *See also* Md. Code, *State Government* Article, § 20-601 et. seq. Furthermore, as of June 8, 2024 (the effective date of County Bill 21-24), the County Council has directed that all complaints of discrimination arising out of County employment be handled pursuant to the County Code and the Employee Relations Manual (which includes the K-01 policy). Internal departmental policies regarding violation of internal index codes that conflict with generally applicable County laws enacted by the County Council are preempted by the legislative enactment. *Fid. & Deposit Co. of Md. v. United States*, 55 F.2d 100, 103 (4th Cir. 1932) (“An administrative officer, though empowered to make regulations, cannot alter statutes, and may only act within the scope of his authority.”); *Fields v. Dept. of Human Resources, Howard County*, 176 Md. App. 152, 159 (2007). While COMAR 12.04.09.01 provides that the agency head of each law enforcement agency “shall” develop the agency’s procedures to handle complaints of police misconduct that do not involve a member of the public, there is nothing in State law that preempts the power of a local government to set procedures that would apply to the processing of internal complaints of discrimination amongst its employees, including police officers.

As provided in County Policy K-01, the County makes the decision as to who investigates violations of the K-01 policy, meaning the Chief Administrative Officer (or the County Executive) decides. That would include authorizing the Officer of Personnel, or the director of the Office of Equity and Human Rights (the County’s EEO Director), or the department head (here, the Police Chief), to conduct a K-01 investigation. *See* K-01 § IV(A)(3). The designation by the CAO as to what department would investigate and resolve a K-01 complaint would control over any internal policies promulgated by any one department. While there is an internal index code maintained by the Police Department (Index Code 302) that includes a prohibition against discrimination, the process to enforce that prohibition must yield

to the direction of the County Council as provided in Bill 21-24.<sup>2</sup> The process to enforce the prohibition against discrimination must also yield to County-wide policies that apply to all County employees. It is noted that a police officer would be entitled to union representation throughout a K-01 investigation, as provided in the current Collective Bargaining Agreement.

### **Discipline and Appeal Rights.**

At the County level, once the K-01 investigation is completed there are two aspects of State law that apply to the outcome of the investigation. While the PAB/ACC process only applies to complaints of police misconduct involving a member of the public, State law does dictate what discipline may be applied if a claim of discrimination not involving a member of the public is deemed sustained:

(a) The Maryland Police Training and Standards Commission shall develop and adopt, by regulation, a model uniform disciplinary matrix for use by each law enforcement agency in the State.

(b) Each law enforcement agency shall adopt the uniform State disciplinary matrix for **all matters that may result in discipline of a police officer.**

Md. Code, *Public Safety* Article, § 3-105; *see also*, COMAR 12.04.10.02(A):.

A. In order to protect the collective integrity of a law enforcement agency, **all matters that may result in discipline** shall be imposed pursuant to the Uniform State Disciplinary Matrix as responsive measures to a police officer's sustained violation of a law enforcement agency's policy.

COMAR 12.04.10.02 (A) (emphasis added). The disciplinary matrix was created by the Maryland Police Training and Standards Commission and is found in COMAR 12.04.10.04. A copy of the "Statewide Police Disciplinary Matrix" as adopted is attached to this Memo.

While there may be some question as to whether this Matrix requirement was intended to be applied to an internal discrimination complaint, at this time the directive of State law is that the Matrix be used for "all matters that may result in discipline of a police officer." Any discipline imposed after a sustained finding for a discrimination complaint must therefore be pursuant to the Matrix.

The second area impacted by State law is the appeal process. As noted above, an employee may appeal any discipline imposed to the Personnel Board, or elect binding arbitration, and then may appeal any decision of the Personnel Board to the Circuit Court for

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2 . For internal discrimination complaints, the County policy in K-01 would comprise the written procedure requirement for internal police complaints required by COMAR 12.04.09.04(B) (*see* FN 1).

Anne Arundel County. Charter, § 521(a)(2); Code § 6-4-113. State law provides differently for a police officer, as any complaint against a law enforcement officer that could result in discipline requires an administrative trial board process to be available to the officer after a sustained finding of a violation:

(a)(1) Except as provided in paragraph (2) of this subsection, each law enforcement agency shall establish a trial board process in accordance with this section to adjudicate **all matters** for which a police officer is subject to discipline.

(2) A small law enforcement agency may use the trial board process of another law enforcement agency by mutual agreement.

Md. Code, *Public Safety* Article § 3-106(a). Under the trial board process, an officer may elect a trial board if they are dissatisfied with the discipline imposed. § 3-105(c). A trial board consists of a serving or retired State administrative law judge or retired District or Circuit Court judge, a civilian appointed by the PAB, and a police officer of like rank to the officer, appointed by the Police Chief. § 3-106(b). A decision of a trial board may be appealed to the Circuit Court. § 3-106(k). For these reasons, any appeal of a disciplinary decision for a K-01 complaint should follow the trial board process established by State law. § 3-106(a).

## CONCLUSION

Complaints of internal employment discrimination involving uniformed police officers are not covered under the 2021 Police Accountability Act and therefore generally not subject to the Police Accountability Board and Administrative Charging Committees processes. Section 1-9-401(b) of the County Code (as enacted by Bill 21-24) requires complaints of discrimination arising out of County employment be handled pursuant to the County Employee Relations Manual and County Policy K-01, which preempts any internal Police Department Index Code process for the processing of complaints of internal discrimination arising out of employment that has previously been adopted by the Police Department.

There are, however, two provisions of State law that do apply to the processing of a complaint of discrimination arising out of County employment of a police officer: (1) any discipline imposed as a result of the K-01 process must be in accord with the model uniform disciplinary matrix adopted by the Maryland Police Training and Standards Commission; (2) a police officer has the right to appeal any discipline imposed to a statutory administrative trial board.

Lastly, a complaint of discrimination by a police officer that does involve a member of the public must be handled through the PAB/ACC process, as with any other complaint of police misconduct involving a member of the public. *Public Safety* Article, § 3-101(g); 3-102(c); 3-103(a); County Code, § 3-7A-110; 3-7A-112(a)(2).

