EXECUTIVE ORDER NO. 9-93

WHEREAS, issues related to public safety are of primary concern to all citizens of the City of Philadelphia;

WHEREAS, it is incumbent upon the government of the City of Philadelphia to ensure that agencies directly responsible for public safety have the proper support from the government and its agencies; and that the citizenry have an equal degree of faith in those agencies to deal with their complaints in a fair, equitable, and timely manner;

WHEREAS, Executive Order 1-80 established procedures for the prompt and impartial processing of complaints against the Police Department;

WHEREAS, there is a need to broaden and codify the procedures by which citizens of the City of Philadelphia can seek redress of grievances against members of the Police Department;

WHEREAS, the effective investigation of, prompt response to, and impartial resolution of citizens' complaints of police harassment, abuse, unlawful use of force, and use of excessive force are essential to the trust that society places in its police;

WHEREAS, numerous complaints of harassment, abuse, unlawful use of force, and use of excessive force have been made by citizens against some members of the Philadelphia Police Department;

WHEREAS, existing procedures for investigating and determining such complaints need to be broadened and made more accessible to the public, thereby permitting the public to hold the Police Department accountable for the resolution of citizens' complaints;

WHEREAS, it is the intention of this Executive Order to preserve the autonomy of the Police Commissioner's exercise of duties, while mandating procedures equitable to both citizens and police personnel for resolving citizens' complaints of police harassment, abuse, unlawful use of force, and use of excessive force, and other misconduct.

NOW, THEREFORE, by the power vested in me in accordance with Section 3-100(h) of the Philadelphia Home Rule Charter, the following guidelines for the processing of complaints alleging brutality, misconduct, or verbal abuse by members of the Philadelphia Police Department, and the study, review, and dispensation of said complaints, are hereby ordered:

SECTION 1. CITIZENS' COMPLAINTS

a. All citizens' complaints against a police officer shall be received, investigated, and disposed of in accordance with

the procedures set forth herein, and complainants shall be notified of action taken by the Police Commissioner.

b. Copies of special pre-numbered complaint forms entitled "Citizen Complaint Report" (CCR), published in separate English Spanish, Chinese, Korean, and other language versions as shall be necessary to provide broad and inclusive access to this complaint procedure, shall be supplied in sufficient quantities to all Police Districts and units, the Philadelphia Commission on Human Relations, the Mayor's Office for Community Services, all Mayor's Action Centers, the District Attorney's Office, City Councilperson's offices, and community-based organizations upon request. In addition, the Police Department shall contact public interest agencies, such as the Coalition on Police Accountability, the Public Interest Law Center Of Philadelphia, Community Legal Services, and the Black Clergy of Philadelphia and Vicinity, and offer to provide forms to these organizations.

Each of the above-listed agencies or officials shall be accountable for the complaint forms issued. Interpreters and persons with needed literacy skills shall be made available to the complainant as needed throughout the complaint and investigation process. Such persons shall not be sworn, currently employed police officers.

c. The complaint form and its carbon copies shall contain a statement to the effect that the filing of a complaint will not necessarily result in a criminal investigation, but that an internal Police Department investigation will be initiated. The complaint form shall also include the address and telephone number of the Internal Affairs Division, and a summary of the procedures and timetable established by this Order for the conduct of investigations and notification to the complainant. Each complainant shall receive a copy of the CCR at the time it is filed with the issuing agency. Not later than twenty-four (24) hours after the CCR is filed with the issuing agency, the said agency shall send a copy of the CCR to the District Attorney's Office.

d. Each agency issuing complaint forms shall maintain a control log of sequential numbers for each form issued.

Each log entry made by an issuing agency shall show the name of the complainant, the date and time the complaint form was given to the complainant, and whether the complainant left the form with the issuing agency to be officially filed. The log shall not show the name, badge number, or other descriptive information relating to any police officer(s) complained of. The Police Department shall keep a master list of all forms and the offices to which they have been assigned. Such control logs and master list shall be available for viewing by the public.

e. The Internal Affairs Division of the Police Department shall be designated as a central control agency for all cases of citizens' complaints against the police.

f. Police Department personnel shall inform any person who wishes to make a complaint against a police officer of the existence of the formal complaint procedure established by this Executive Order and shall refer such persons to the various locations, including the nearest location, where the CCR may be obtained and filed.

g. The Police Department shall promulgate specific procedures for the recording and processing of citizen complaints against the police in accordance with this Executive Order by its effective date. The Police Department shall also prepare, publish, and distribute CCRs in accordance with this Executive Order by its effective date.

SECTION 2. PROCEDURES FOR THE INVESTIGATION OF COMPLAINTS

All civilian complaints concerning police misconduct which are filed shall be received, investigated, and disposed of in accordance with procedures set forth herein, except as provided in Section 5 infra. The following procedures shall govern the investigation of the citizen's complaint:

a. Upon receipt of the CCR, the Commanding Officer of Internal Affairs shall promptly assign it for investigation to a member of Internal Affairs who shall be responsible for the investigation of the alleged incident. All such investigations shall be initiated by, and insofar as practicable, carried out by, the staff of Internal Affairs. The staff of Internal Affairs shall have direct responsibility for all such investigations. No such complaint shall be referred for investigation to the commanding officer of the police officer against whom the complaint has been lodged, or to any other officer of the same command; provided, however, that Internal Affairs may refer verbal abuse and lack of service complaints to the Commanding Officer of the unit to which the accused officer is attached, where appropriate. Internal Affairs shall monitor and review such investigations and take appropriate action, if necessary.

b. The investigation by Internal Affairs shall include, but not be limited to, the following:

- Interviews with the complaining witness, the alleged victim of the police misconduct (if other than the complaining witness), and all other witnesses to the incident who are indicated on the complaint form;

• Interviews with the police officer against whom the complaint is lodged and all other police officers witnessing or involved in the alleged incident;

• Interviews with all other witnesses to the alleged incident who became known to the investigating officer as a result of investigation;

• Examination of the scene of the alleged incident, when appropriate;

• Viewing, analysis, and preservation of all other physical evidence, if any;

• The gathering of all pertinent Police Department forms, analyses, technical reports, laboratory results, tapes and transcripts of telephone calls, and radio transmissions;

• In the event that a criminal complaint has been lodged against any witness or participant in the event, a review and analysis of the investigation file compiled by the Police Department and/or the District Attorney's Office in connection with such criminal complaint, when available;

• Such other investigative steps as may appear appropriate in the discretion of the assigned investigator, whose responsibility it shall be to record each step in the investigation and the result thereof in an Investigation Report.

c. The assigned investigator shall attempt to secure written statements from all participants in, and witnesses to, the alleged incident, but where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall provide a summary of the oral statement, if any, provided by such participant or witness. Where a writen statement is given and signed by a participant or witness, the assigned investigator shall provide the person making the statement with a copy.

d. When a complainant is unable to identify the police officer against whom a complaint is lodged by name or badge number, the assigned investigator shall make every effort to assist the complainant in making a positive identification of the police officer.

e. All investigations shall be completed by Internal Affairs within seventy-five (75) days from the date of the filing of the CCR, except for extenuating circumstances stated in the Investigation Report and approved by the Police Commissioner or the Commanding Officer of Internal Affairs. The Investigation Report shall include the written recommendation of the investigator as to the validity of the complaint.

f. Within fifteen (15) days of the completion of an investigation, the ranking officer of Internal Affairs shall review the Investigation Report and, upon giving approval thereof, forward the Investigation Report, the entire investigation file, and the ranking officer's written conclusion as to the occurrence and nature of police misconduct, if any, to the Police Commissioner.

g. If extenuating circumstances necessitate an extension of time, the complainant (as well as the accused police officer) shall be notified of this fact and the reason therefor.

SECTION 3. ANONYMOUS COMPLAINTS

a. In all instances where an anonymous complaint is received by a member of the Police Department concerning allegations of misconduct, the individual receiving the complaint shall attempt to notify the anonymous complainant of the availability of the procedures for lodging a formal complaint.

b. Should the anonymous complainant persist in desiring to remain anonymous, the individual receiving the complaint shall attempt to elicit all facts which the complainant can provide and shall record and process the complaint in as normal a manner as possible under the circumstances.

SECTION 4. FRIVOLOUS COMPLAINTS

The following shall be the procedure for the disposition of frivolous complaints:

Where the facts alleged in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct (if other than the complainant), disclose no improper behavior on the part of the police officer against whom the complaint is lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice thereof to be given to the complainant and to the alleged victim of misconduct (if other than the complainant), or to the representative designated in the CCR.

SECTION 5. PRIORITY OF INVESTIGATIONS

a. In the event that the complainant or alleged victim of police misconduct (if other than the complainant) has been arrested and charged with an offense or offenses based upon the events on which the CCR is founded, the investigation and disposition of the complaint shall conform to the procedures established in this Order. However, the complainant or the alleged victim of police misconduct may elect not to give a written or oral statement either to the assigned investigator or before the Police Board of Inquiry, or both, until the final disposition, including appeal, of all such

criminal charges. In the event of such an election, the investigation shall remain open until such criminal charges have reached a final disposition, including appeal, and a new opportunity has been given the complainant or alleged victim to make such a statement.

b. In the event that a prosecutorial agency notifies the Police Commissioner that the officer who is the subject of a complaint is under criminal investigation for the offense complained of in the CCR or in the event that a police officer is arrested for the offense complained of in the CCR, the investigation and disposition of the complaint shall conform to the procedures established by this Order. Where criminal charges are not resolved or the criminal investigation is not completed prior to the Commissioner or his appointed delegate's final determination of the Citizen Complaint, the Commissioner shall reevaluate such final determination within fifteen (15) days of the resolution of criminal charges or the closing of the criminal investigation. A criminal investigation shall be deeemed closed upon written notice from the prosecutorial agency. The Commissioner may affirm, modify, or reverse the prior determination in light of the outcome of the criminal charges or criminal investigation, or may reopen the departmental investigation which shall conform to the within procedures. A brief statement by the Commissioner supporting the decision upon reevaluation shall be transmitted to the complainant or alleged victim of police misconduct (if other than the complainant), and in the manner prescribed by Section 6(d) below.

c. In the event the initiation or completion of an investigation is delayed due to possible or pending criminal charges as detailed in Sections 5(a) or (b) hereof, the time period mandated for the completion and disposition of the investigation as contained in this Executive Order may be extended for the period of the delay.

SECTION 6. REVIEW AND DISPOSITION

Upon receipt of the file and the findings and conclusion of the ranking officer of the Internal Affairs Division, the Police Commissioner or a Deputy Commissioner assigned by the Commissioner shall review the entire file and determine the appropriate disposition of the complaint in accordance with the following provisions:

a. Criminal Misconduct.

(1) In every case in which the Commissioner or his appointed delegate determines with reasonable satisfaction from the investigation that misconduct rising to the level of a crime has occurred, the Commissioner shall impose sanctions as the Commissioner deems appropriate and shall refer the matter to the

District Attorney for consideration and prosecution unless prosecution has been previously initiated. Whether misconduct rises to the level of a crime shall be determined by reference to the Pennsylvania Crimes Code.

(2) In every case in which the Commissioner or his appointed delegate determines from the investigation that (a) there are reasonable grounds to believe that misconduct rising to the level of a crime has occurred, and (b) there are disputed issues of credibility which prevent a determination of the complaint upon the investigation only, the Commissioner or appointed delegate shall refer the complaint to the Police Board of Inquiry for a hearing.

(3) In every case in which the Police Commissioner or his appointed delegate determines from the investigation, and without regard to any person's credibility, that there are no reasonable grounds to believe that criminal misconduct has occurred, the Commissioner or his appointed delegate shall proceed in accordance with Section 6(b) hereof.

b. Non-Criminal Misconduct.

In every case in which the Police Commissioner or his appointed delegate determines, pursuant to Section 6(a)(3) above, that no misconduct rising to the level of a crime has occurred, the Commissioner shall either (a) make a finding that non-criminal misconduct has occurred and shall impose sanctions as the Commissioner shall deem appropriate; (b) refer the complaint to the Police Board of Inquiry for a hearing; or (c) make a finding that no misconduct has occurred and shall close the file.

c. Disciplinary Action.

In every case in which the Police Commissioner or his appointed delegate determines that misconduct has occurred, the Commissioner shall impose sanctions which are commensurate with the seriousness of the misconduct, taking into account the prior history of the officer in question. Sanctions shall range from a reprimand to dismissal from service.

d. Notice.

The disposition of the complaint, including any disciplinary action, shall be communicated in writing by certified mail, to the officer against whom the complaint has been lodged, the complainant and the alleged victim of police misconduct (if other than the complainant) or such person's representative as may be designated in the CCR, and the District Attorney's Office. The

notification shall inform the person to whom it is given that the entire file is available for review.

e. Except for extenuating circumstances stated in the file, the determination of the Police Commissioner and the notice prescribed in Section 6(d) above shall be made within twenty (20) days from the receipt of the file by the Police Commissioner.

f. In those instances in which the Police Commissioner determines that no misconduct has occurred, the notice to the complainant and to the alleged victim (if other than the complainant) shall include a summary of the investigative findings and the reason for the Police Commissioner's action.

SECTION 7. THE POLICE BOARD OF INQUIRY

a. Upon referral by the Commissioner of a complaint to the Police Board of Inquiry (the "Board") for hearing, the following shall apply:

> The Board shall schedule a hearing to be held within thirty (30) days from the certification of a complaint. Not less than fifteen (15) days written notice of the time and place of the hearing shall be given by certified mail, return receipt requested, to the complainant and the alleged victim of police misconduct (if other than the complainant) or to his/her attorney or other representative designated in the CCR; to material witnesses identified in the investigation; to the police officer charged with misconduct; and to all witnesses and participants whom the Commissioner or the Board believes may be helpful in resolving the questions before the Board.

b. Continuances in the scheduled hearing date may be granted only after a written request by a member of the Board or the Department Advocate. If a continuance is granted, the hearing shall be rescheduled to be held within ten (10) days from the date of the first scheduled hearing, if possible, and notice shall be given to the parties and witnesses by certified mail, return receipt requested.

c. Hearings shall be informal and strict rules of evidence will not be applied. The assigned investigator and any officers against whom charges have been placed shall attend. Testimony under oath shall be received from all persons who appear and purport to have information which is material to the complaint. All parties may be represented by counsel or other representative and shall have the right to present evidence and to examine and cross-examine witnesses. A stenographic record shall be kept and shall be made available, upon payment of costs, to any person requesting same. All hearings shall be open to the public.

d. Within ten (10) days of the hearing, the Board shall forward to the Police Commissioner or appointed delegate written findings of ultimate facts together with its recommendation for disciplinary action against a police officer found to have engaged in misconduct. Where the Board finds that misconduct rising to the level of a crime has occurred, determined by reference to the Pennsylvania Crimes Code, it shall refer the matter to the District Attorney for consideration of prosecution, except where prosecution has previously been initiated. A copy of the Board's findings and recommendation, if any, shall be kept on file by the Department Advocate.

e. Upon consideration of the Board's findings and recommendation, if any, the Police Commissioner or appointed delegate shall make a final determination of the complaint, which together with a brief statement of reasons in support of the determination, shall be transmitted to the appropriate parties, and in the manner as provided by Section 6(d) above.

SECTION 8. PUBLIC ACCESS AND MAINTENANCE OF RECORDS

The following shall govern the maintenance and distribution of all documents arising from the institution of a citizen's complaint alleging police misconduct.

a. Following disposition of the complaint, two (2) true copies of the entire investigation file, the written findings and recommendations of the Board, if any, and the Police Commissioner's final determination shall be maintained at a designated location in the Internal Affairs Division with one (1) set filed under the complainant's name and one (1) set filed under the name of the police officer who is the subject of the complaint, and these records shall be made available to the public during normal working hours, except as otherwise provided below.

The Police Department shall provide a copy of the entire file to the District Attorney's Office within seventy-two (72) hours following receipt of a written request from the District Attorney's Office. During the investigation and upon receipt of a written request from the District Attorney's Office, the assigned investigator shall provide to the District Attorney's Office any requested information within twenty-four (24) hours after receipt of the request. In addition, the Police Department shall publish semi-annual statistics disclosing the number of complaints filed, the nature of the complaints, and their disposition.

(1) Upon the request of third-party witnesses, their names and addresses can be omitted from the public file; however, their names and addresses will be provided to the District Attorney, and upon request, to the police officer against whom the complaint is lodged, the complainant, and the victim if other than the complainant.

(2) The records of those anonymous complaints which have been received according to Section 3(b) above, and for which an investigation has found no corroboration of the complainant's version of the facts, shall be maintained in a separate public file in chronological order and the names of all parties shall be omitted. The identities of the parties shall be provided, however, to the District Attorney, and upon request to the police officer against whom the complaint is lodged, the complainant, and the victim if other than the complainant. All other anonymous complaints shall be maintained as provided in Section 8(a) above.

(3) In any case where the incident which is the subject of the Citizen Complaint has resulted in a criminal investigation conducted by a prosecutorial agency or a criminal prosecution for any of the parties, the records of the complaint shall be placed in the public file until such time as the criminal charges have been resolved by a verdict in the trial court or the prosecutorial agencies involved in the investigation have notified the Police Commissioner that the criminal investigation is closed. The records will be provided, however, to the District Attorney, and, upon request, to the police officer against whom the complaint is lodged, the complainant, and the victim if other than the complainant.

(4) In order to protect the privacy interests of all parties involved in the investigation, records or information obtained in the course of an investigation which would operate to the prejudice or impairment of a person's reputation or security as contained in the Pennsylvania Right to Know Act, 65 P. S. 66.1, shall not be included in the investigative report or file available for public access under this section. These documents include, but are not limited to, medical and psychiatric records, information supplied to the police with an expectation of confidentiality, and other portions of the investigation file that the Police Commissioner determines need to be kept confidential in order to protect the integrity of the investigatory process. These documents should be retained in a separate and secure file.

(5) All records maintained in the public files as described in Section 8(a) shall be maintained for a period of five (5) years beyond the calendar year during which the complaint was made.

b. A copy of the final determination of the Police Commissioner shall be maintained in the personnel file of the officer or officers involved, together with the findings and recommendations of the Board, if any. In those instances in which a complaint is terminated prior to a hearing, a copy of the

complaint and the determination of the Police Commissioner shall be placed in the personnel file of the officer or officers involved.

SECTION 9. The within procedures shall be in addition to and not in derogation of:

a. The procedures existing from time to time for preservation of the rights of police officers pursuant to the Civil Service Code and Regulations of the City of Philadelphia, and

b. The responsibility of the Police Department to investigate crime or refer cases to the proper authorities.

SECTION 10. If any section of this Order is declared to be unconstitutional or illegal, the remaining sections shall remain valid and unaffected.

SECTION 11. This Executive Order shall be effective in sixty (60) days.

June 3, 1993
Date

Edward G. Rendell
Edward G. Rendell
Mayor