

406. **EMPLOYEE MISCONDUCT ALLEGATIONS AND COMPLAINT POLICY AND PROCEDURE**

a. Policy

- (1) A relationship of trust and confidence between Department members and the community is essential for effective law enforcement. Law Enforcement officers must be free to exercise their best judgment and to initiate enforcement action a lawful and impartial manner without fear and reprisal. While at the same time they must meticulously respect individual rights.
- (2) This complaint procedures is intended to provide corrective action when a department member conducts himself/herself improperly and to protect: him/her from unwarranted criticism when he/she discharges his/her duties properly.
- (3) Any person who believes that a law enforcement act is improper is encouraged to bring the complaint to the department's attention.
- (4) The department will make every effort to insure that no adverse consequences occur to any person or witness who brought a complaint or provided information in any investigation of a complaint.
- (5) Complaints shall be handled in a prompt, just, open & expeditious manner in accordance with these procedures. Summaries of the complaint process and copies of these procedures shall be made available to the public upon request.

b. Definition of Terms

For the purpose of this policies and procedures manual, the terms defined have the meaning given to them.

- (1) Chief means the Chief of Police or the Mayor when a complaint is made against the police chief.
- (2) Complainant means the person or group who files a complaint with the department alleging misconduct by a member(s) or the department supervisor who accepts believable facts relating to alleged misconduct by a member from an anonymous person.
- (3) Complaint means a statement which is made to a department supervisor in writing, in person, or by phone which allege misconduct.

- (4) Exonerated means a fair preponderance of the evidence established either that:
- (a) The act, or acts, complained of did not occur;
 - (b) The member(s) named in the complaint were not involved in the alleged misconduct;
 - (c) That the act(s) which provided the basis for the complaint occurred, however, the investigation reveals that such act(s) were justified, lawful, and proper; or
 - (d) That such act(s) do not adversely reflect upon the department or the member's ability to perform his/her duties within the department.
- (5) Infraction means violation of any department policy and procedure defining transgressions that are not major violations.
- (6) Major Violations means:
- (a) Any criminal offense;
 - (b) The use of unnecessary excessive force;
 - (c) Abuse of authority;
 - (d) Conduct which violates a person's civil rights;
 - (e) Abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin or sexual preference; and
 - (f) Intimidation of or recrimination toward a complainant or witness involved in any complaint proceeding.
- (7) Member means all peace officers and civilian department employees whether full-time, part-time or temporary.
- (8) Misconduct means any infraction or major violation committed by a member which adversely reflects upon the department or the member's ability to perform his/her duties within the department.
- (9) Policies and Procedures mean the administrative acts promulgated by the chief

regulating conduct of members.

- (10) Police Civil Service Commission means the appointed body established under MS Chapter 419, that carried out the duties as described in the Civil Service Rules and Regulations concerning police officers.
- (11) Not Sustained means the investigation failed to disclose sufficient evidence to prove or disprove the allegation(s) made in the complaint.
- (12) Sustained means a fair preponderance of the evidence obtained in the investigation established that the accused member's actions constituted misconduct.

3. Procedure fo Initiating Complaint

1. Anyone who is not a member, and has personal knowledge of the facts giving rise to the complaint or has reliable hearsay information and with name of the source, may file a complaint. Any department member who has personal knowledge of misconduct shall file a complaint according to these procedures.
2. There shall be an officer available at all times who will take complaints. Upon receiving any complaint, the officer shall immediately initiate an Initial Complaint Report: (ICR) and assign a case file number. The complaint will not be considered filed until the complainant signs the ICR. If, however, the officer who is to take the complaint is the subject of the complaint, the complainant will be advised of the time when another officer will be available.
3. If the person filing the complaint sets forth specific believable facts relating to the alleged misconduct and the person wished to remain anonymous, the officer receiving the information shall then become the complainant. If the officer has reason to believe that the complainant is unfounded, the supervisor shall have the authority to require the person to identify himself/herself. If the person refuses to do so, the supervisor may refuse to initiate the complaint and shall advise the anonymous person to that fact.
4. After a complaint is filed, the officer shall sign the document, give or mail a copy to the complainant and furnish a copy to the chief. The chief will forward a copy of the document to-the accused member, Only after it is determined that the complaint does not allege a criminal violation and the notification will not impede

a criminal investigation.

5. A complainant may be accompanied by an attorney or other appropriate representative at the time the complaint is filed or at any other stage of the process.

4. Procedure for Investigation of the Complaint

1. Upon receipt of the ICR, the chief shall make an initial determination whether the facts alleged warrant a formal investigation. In making this determination, the chief may meet informally with the complainant, accused member or any potential witness. If the chief decides that an investigation is not warranted, the disposition of the complaint shall be either not sustained or exonerated. The complainant will be notified of this decision and the basis for determination. Also, the accused member will be notified. If the complainant supplies additional information within 30 days of the determination, the chief may reverse this decision.
2. If the chief determines that a formal investigation should be conducted, the chief shall assign the appropriate officer to investigate the complaint. The investigation may be assigned to an external agency where there is the potential for criminal charges resulting from the investigation or in any other situation where the chief believes that an external investigation is appropriate.
3. The investigator shall, as soon as possible after, being assigned the investigation, inform the complainant of his/her name, business phone number and the status of the complaint.
4. The investigator shall thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation uncovers potential misconduct by another member, the investigator shall initiate a complaint against the member.
5. All members, including the accused member, shall cooperate with the investigation. The investigator shall follow the Peace Officer, Discipline Procedures Act as provided in MS 626.89 as applicable. Failure to cooperate may

be basis for disciplinary action.

6. The investigator shall do a report which shall contain all relevant information organized into the three following sections:
 - a. Allegations - This section shall consist of an itemized summary of the acts of misconduct alleged in the complaint. Reference shall be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
 - b. Investigation - This section shall consist of a chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused member(s), and all available witnesses. Written statements, description and analysis of any physical evidence and all information.
 - c. Conclusions - This section shall include the investigators findings, conclusions as to whether any misconduct occurred, and the underlying reasons for the findings and conclusions. These conclusions shall not be binding on the chief or the Civil Service Commission.
- G. The investigation shall be concluded within thirty (30) days of the filing of the complaint, unless for good cause an extension is granted by the chief. The complainant shall be informed of any extension of time and the accused member shall also be informed if he/she was informed pursuant to Section III, D.

5. Investigation Review and Disposition

- a. Upon completion of the investigation, the investigator shall submit his/her report, the case file, and all investigative notes to the chief. If the chief determines the investigation was not adequate, he/she will reorder the investigation. If the chief determines the investigation adequate, the chief shall make one of the following dispositions: Exonerated, Not Sustained, or Sustained. The Chief shall advise the Civil Service Commission of his/her conclusion.
- b. The chief may withhold issuing a disposition until any related criminal charges are resolved. The complainant shall be informed of this decision & the accused shall also be informed if he/she was informed pursuant to Section III, B.
- c. If the complaint is either exonerated or not sustained, the chief shall immediately notify the complainant and the accused member of the disposition.
- d. If the complaint is sustained, the chief shall take appropriate action. Such action shall be based on the investigative report and the accused member's record of service and shall be in conformance with any applicable collective bargaining agreement, contract or Civil Service regulation and Department policy and

procedures relating to discipline of members. The disciplinary action may include counseling, remedial education, an oral reprimand, a written reprimand, suspension with or without pay, demotion or discharge.

- e. After selecting the appropriate disciplinary action, the chief will issued a Finding of Fact which shall minimally contain the following information:
 - 1. A summary of the act or acts constitution misconduct and the specific statues, policies, regulations and procedures violated;
 - 2. A description of the disciplinary or remedial action taken to prevent recurrence of the misconduct; and
 - 3. Any additional information as the chief may find applicable to accurately document the disposition.
- f. Prior to the implementation of remedial and or disciplinary actions, the accused member shall be provided with a copy of the Findings of the Fact. The chief and or appropriate person shall review it with the accused member and explain the reasons for the action.
- g. The complainant shall also be given a copy of the Findings of the Fact.
- h. Either the complainant or the accused member may within 15 days after notification of the disposition, request the chief, for good cause, to reopen the investigation. The disposition shall be final upon expiration of the 15-day period if there is not request for reconsideration. If a request for reconsideration is made, the disposition shall become final upon a decision on such request or the completion of any additional actions directed by the chief. Notwithstanding the foregoing, the investigation may be reopened by the chief at any time if substantial new evidence is discovered which is relevant to the complaint.
- i. When a sustained disposition is final, the accused member may appeal the disposition according to the member's collective bargaining agreement, Civil Service Regulation, or if applicable, through the Veteran's Preference Act.
- j. The chief may suspend an accused member as provided in Civil Service Regulations and other policies and procedures at any time during the investigation of a complaint.
- k. This policy procedure shall not preclude other disciplinary procedures for misconduct not initiated by citizen complaint.

6. Maintenance and Disclosure of Data

- a. Disclosure to the complainant, accused member of the public of data collected, created, received, or maintained in connection with this policy and procedure, shall be governed by the Minnesota Government Data Practices Act.
- b. All data collected, created or, received by the department in connection with this policy and procedure shall be maintained in accordance with the department's retention schedule.
- c. The placement of the disposition report or other data in an employee's personal file shall be governed by applicable collective bargaining agreement and/or personnel policy.