

# Investigation of Allegations of Misconduct

## 1031.1 POLICY

It is the policy of the Waseca Police Department that any person who believes that an employee of this agency has acted improperly may bring a complaint to the chief law enforcement officer's attention pursuant to the following procedure. It is also the policy of the Waseca Police Department that all allegations of employee misconduct be thoroughly investigated and promptly adjudicated.

## 1031.2 DEFINITIONS

For the purpose of this policy the terms set forth below are defined as follows:

A. **Chief Law Enforcement Officer** within this policy, the chief law enforcement officer will be referred to as Chief of Police

B. **Law Enforcement Officer** means an individual who holds a peace officer license in the State of Minnesota. Within this model policy, a law enforcement officer will be referred to as LEO.

C. **Administrative Investigation** means an internal investigation conducted in response to a complaint with the goal of determining whether an employee engaged in misconduct.

D. **Complainant** means a person who submits a complaint to the Chief of Police alleging misconduct by an agency member.

E. **Complaint** means a written statement made to or by the Chief of Police alleging misconduct.

F. **Member** means all voluntary and compensated personnel in the agency.

G. **Discipline** means

1. oral reprimand
2. written reprimand
3. suspension
4. demotion or
5. discharge/termination

H. **Unfounded** means the investigation indicated that the complained action did not occur.

I. **Exonerated** means a fair preponderance of the evidence established either that:

1. the agency member named in the complaint was not involved in the alleged misconduct; or
2. The act(s) that provided the basis for the complaint occurred; however, the investigation reveals that such act(s) were justified, lawful and/or proper.

J. **Not Sustained** means the investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.

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K. **Sustained** means the investigation disclosed that the action complained about did in fact occur in the manner or degree stated.

L. **Sustained with Qualifications** means the investigation disclosed that the action complained about did in fact occur but not in the manner or to the degree stated.

M. **Policy Failure** means that the complaint revealed a policy failure. The allegation is factual and the LEO(s) followed proper agency procedure, however, that procedure has proven to be deficient.

N. **Formal Statement** means the questioning of an agency member in the course of obtaining a recorded, stenographic or signed statement to be used as evidence in a disciplinary proceeding against the agency member.

O. **Respondent** means an agency member, whether full-time, part-time, temporary or voluntary, against whom a complaint has been filed.

P. **Misconduct** means but may not be limited to:

1. a violation of any agency policy and procedure governing conduct of agency members;
2. conduct by a peace officer that would be a violation of POST Standards of Conduct per Minn. Rules 6700.1600;
3. the use of unnecessary or excessive force;
4. the conviction of any criminal offense;
5. abuse of authority;
6. conduct which violates a person's civil rights;
7. abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin or sexual preference;
8. sexual harassment as that term is defined under Minnesota law;
9. intimidation or retribution toward a complainant or witness involved in any complaint proceeding;
10. any conduct by its nature will reflect unfavorably upon the department.

Q. **Policies and Procedures** mean the administrative rules adopted by the agency regulating the conduct of agency members.

R. **Shall / Will** means, as used herein, that the action is mandatory.

S. **May** means that the action is permissible.

T. **Receiving Authority** means the person who receives the complaint when the subject of the complaint is the Chief of Police.

U. **Investigator** means any member of the Waseca Police Department or other person(s) who is designated by the Chief of Police to investigate personnel complaints.

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#### **1031.2 PROCEDURE**

##### **A. Initiating Complaint**

1. Anyone who has personal knowledge of facts or reliable hearsay information may file a complaint. Any agency member who has personal knowledge of misconduct shall file a complaint according to the procedures stated herein.
2. Complaint forms must be made available through agency personnel, at designated public facilities and online.
3. Employees must provide assistance to the individuals who express the desire to lodge complaint(s) against any employee of this agency.
4. Any agency member shall self-report to the CHIEF OF POLICE any action, inaction, or condition of that agency member which the agency member reasonably believes would constitute grounds for disciplinary action.
5. Upon receiving a complaint against a member within the agency, the CHIEF OF POLICE receiving the complaint shall immediately have the complainant complete an "Allegation of Misconduct" form. The complaint will not be considered filed until the complainant signs the Allegation of Misconduct form.
6. If the person making a complaint sets forth specific believable facts supporting an allegation of misconduct but wishes to remain anonymous, the CHIEF OF POLICE receiving the complaint may, with sole discretion, permit the complainant to remain anonymous. In this instance the CHIEF OF POLICE shall sign the complaint as the complainant. If the CHIEF OF POLICE has reason to believe the complaint is unfounded, the CHIEF OF POLICE shall have the authority to require an anonymous complainant to identify himself/herself. If that complainant refuses to do so, the CHIEF OF POLICE may refuse to accept a complaint and shall advise the anonymous person of that fact.
7. After the "Allegation of Misconduct" form is filed, the CHIEF OF POLICE shall sign the document keeping a copy for the agency and providing a copy to the complainant. The CHIEF OF POLICE will forward a copy of the document to the respondent only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation or a noncriminal investigation.
8. A complainant may be accompanied by an attorney or other representative at the time a complaint is filed or at any other stage of the process.
9. Any complaint made against the Chief of Police shall initially be made to the City Manager. Upon receiving a complaint the receiving authority shall immediately have the complainant complete an "Allegation of Misconduct" form. The complaint will not be considered until the complainant signs the Allegation of Misconduct form.
10. The City Manager should refer alleged misconduct against a CHIEF OF POLICE to an outside law enforcement agency or criminal justice agency.

#### **1031.3 INVESTIGATION OF A COMPLAINT**

1. Upon receipt of the Allegation of Misconduct form, the CHIEF OF POLICE shall make an initial determination as to whether the facts alleged require a formal investigation. If the CHIEF OF POLICE decides that an investigation is not required, the disposition of the investigation is not required. The disposition of the complaint shall be either "unfounded," "sustained", "not sustained", "exonerated" or "policy failure." The complainant and the respondent will be notified of this decision and the basis for determination. If the complainant supplies

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additional information within thirty (30) days of that initial determination, the CHIEF OF POLICE may reverse this decision and order a formal investigation.

2. If the CHIEF OF POLICE determines a formal investigation is required an appropriate person will be assigned to investigate the complaint. When the CHIEF OF POLICE believes an external investigation is appropriate and/or when the CHIEF OF POLICE is the subject of the complaint, the investigation will be assigned to an external agency.

3. The CHIEF OF POLICE may suspend a respondent with pay at any time during the investigation of a complaint.

4. As soon as possible after being assigned the investigation the investigator shall inform the complainant of his or her name, business phone number, and the status of the complaint.

5. 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 reveals potential misconduct by another agency member the investigator shall report that fact to the Chief of Police or, in the case of a complaint against the Chief of Police, the City Manager.

6. All agency members shall cooperate with the investigation. When the respondent is a licensed peace officer, the investigation shall comply with the requirements of MN STAT 626.89 and acts amendatory thereto.

7. The investigator shall prepare a report which should contain the following relevant information:

a) Allegations: 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: a chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused agency member and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information shall be included.

c) Conclusions: the investigator's findings, conclusions as to whether any misconduct occurred and the underlying reasons for the finds and conclusions.

8. The investigation shall be completed within ninety (90) days of the filing of the complaint unless the CHIEF OF POLICE determines there is good cause to grant an extension to the investigation time. The complainant and respondent shall be informed of any extension.

9. A complaint received through the Minnesota Board of Peace Officer Standards and Training will be handled pursuant to this policy.

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#### **1031.4 ADDITIONAL INVESTIGATION, REVIEW AND DISPOSITION**

1. Upon completion of the investigation the investigator shall submit the report, case file and all investigative notes to the CHIEF OF POLICE. The CHIEF OF POLICE may require additional investigation or make one of the following decisions:

- unfounded
- exonerated
- not sustained
- sustained
- sustained with qualifications
- policy failure

2. The CHIEF OF POLICE may postpone making a decision until any related criminal charges are resolved. The complainant and respondent shall be informed of this decision.

3. If the decision is "unfounded," "exonerated" or "not sustained" or "policy failure" the CHIEF OF POLICE shall notify the complainant and the respondent of the decision.

4. If the complaint is "sustained" the CHIEF OF POLICE will:

- a. issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated; and
- b. take appropriate remedial and/or disciplinary action.
- c. advise the complainant of any public information regarding the disposition.

5. Prior to the implementation of remedial and/or disciplinary action the respondent will be provided with a copy of the findings of fact. The CHIEF OF POLICE and/or appropriate person shall review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action.

6. The investigation may be re-opened by the CHIEF OF POLICE at any time if substantial new evidence is discovered concerning the complaint.

7. When a "sustained" disposition is final the respondent may appeal the disposition pursuant to the rules and law governing the accused member's employment.

#### **1031.5 MAINTENANCE AND CLOSURE OF DATA**

1. Disclosure to the public, complainant and respondent of data collected, created or received by the agency in connection with this policy and procedure shall be governed by the provisions of the MN Government Data Practices Act. Retention of data collected or maintained in connection with this policy shall be retained in accordance with the agency's "Record Retention Schedule."

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2. All data collected, created or received by the agency in connection with this policy and procedure shall be maintained in accordance with the agency's "Record Retention Schedule."
3. The placement of the disposition report or other data in an employee's personnel file shall be governed by the agency's personnel policy.
4. Access to data collected, created, or received in connection with this policy and procedure may only be authorized by the CHIEF OF POLICE or the agency's Data Practices "Responsible Authority," and as provided by Chapter 13, the "Minnesota Government Data Practices Act," or the City of Waseca Data Practices policy, or valid court order.

#### **1031.7 POST BOARD REPORTING REQUIREMENTS**

1. Under Minn Rule 6700.1610, a licensed peace officer must self-report to the POST Board any violations of the Standards of Conduct for peace officers listed in Minn. Rule 6700.1600
2. Any person with knowledge of peace officer misconduct constituting grounds for action under Minn. Stat. chapter 214, or Minn. Rules 6700.1600, may report the violation to the board.
3. Minnesota Stat. 626.8457 Subd. 3 requires CLEOs to submit individual peace officer public and private data related to the allegations of misconduct to the POST Board in "real time" via the POST Board Misconduct Reporting System.
4. A chief law enforcement officer must update data within 30 days of final disposition of a complaint or investigation.
5. Law enforcement agencies and political subdivisions are prohibited from entering into a confidentiality agreement that would prevent disclosure of the data identified in Minn. Stat. 626.8457 Subd. 3 paragraph (b) to the Board. Any such confidentiality agreement is void as to the requirements of this section.