

GENERAL ORDER 10

ALLEGATIONS OF MISCONDUCT

10.1 CITIZEN COMPLAINT POLICY AND PROCEDURE

1. A relationship of trust and confidence between department members and the community they serve is essential for effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a lawful and impartial manner without fear and reprisal. While at the same time they must meticulously respect individual rights.
2. This complaint procedure 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 ensure 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, and expeditious matter in accordance with these procedures. Summaries of the complaint process, and copies of these procedures shall be made available to the public upon request.

Definition of Terms

For this policy and procedure manual, the terms defined have the meanings given to them.

Chief: means the Chief of Police or the City Attorney when a complaint is made against the Police Chief.

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.

Complaint: means a statement which is made to a department supervisor in writing, in person, or by phone which alleges misconduct. If the complaint is made in writing, the complaint form below should be given to and completed by the complainant.

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

- (1) the act, or acts, complained of did not occur.
- (2) the members named in the complaint were not involved in the alleged misconduct.
- (3) 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
- (4) that such act(s) do not adversely reflect upon the department or the member's ability to perform his/her duties within the department.

Infraction: means violation of any department policy and procedure defining transgressions that are not major violations

10.1.1 MAJOR VIOLATIONS

1. Any criminal offense.
2. The use of unnecessary or excessive force.
3. Abuse of authority.
4. Conduct which violates a person's civil rights.
5. Abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin, or sexual preference.
6. 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. Not Sustained means the investigation failed to disclose sufficient evidence to prove or disprove the allegation(s) made in the complaint.
10. Policies and Procedures means the administrative acts promulgated by the Chief regulating the conduct of members.
11. Sustained means a fair preponderance of the evidence obtained in the investigation established that the accused member's actions constituted misconduct.

10.1.2 PROCEDURE FOR 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 may file a complaint. Any department member who has personal knowledge of misconduct shall file a complaint according to these procedures.
2. There shall always be a supervisor available who is responsible for taking complaints. Upon receiving any complaint, the supervisor 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 initial complaint report.
3. If the person filing the complaint sets forth specific believable facts relating to the alleged misconduct and the person wishes to remain anonymous, the supervisor receiving the information shall then become the complainant. If the supervisor has reason to believe that the complaint 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 a complaint and shall advise the anonymous person of that fact.
5. After a complaint is filed, the supervisor 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 investigation.
6. A complainant may be accompanied by an attorney or other appropriate representative at the time a complaint is filed or at any other stage of the process.

10.1.3 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 may meet informally with 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, he/she shall assign the appropriate supervisor 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 during the investigation. If the investigation uncovers potential misconduct by another member, the investigator shall initiate a complaint against that member.
5. All members, including the accused member, shall cooperate with the investigation. Failure to cooperate may be a basis for disciplinary action.
6. The investigator shall do a report which shall contain all relevant information, organized into the three following sections:

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.

Investigation - This section shall consist of a chronological summary of the investigation, including all pertinent facts obtained through all the available witnesses. Written statements, description and analysis of any physical evidence, and all other relevant information shall be included.

Conclusion(s) - 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.

7. The investigations 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 3-D.

10.1.4 INVESTIGATION REVIEW AND DISPOSITION

1. 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 was adequate, the Chief shall make one of the following dispositions: Exonerated, Not Sustained, or Sustained.

2. The Chief may withhold issuing a disposition until any related criminal charges are resolved. The complainant shall be informed if he/she was informed pursuant to section 3-B.
3. If the complainant is either exonerated or not sustained, the Chief shall immediately notify the complainant and the accused member of the disposition.
4. If the complainant is sustained the Chief shall take appropriate disciplinary 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 other rule or regulation 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.
5. After selecting the appropriate disciplinary action, the Chief will issue a Findings of Fact which shall minimally contain the following information:
 - a. A summary of the act or acts constituting misconduct and the specific statutes, policies, regulations, and procedures violated.
 - b. description of the disciplinary or remedial action taken to prevent recurrence of the misconduct, and;
 - c. Any additional information as the Chief may find applicable to accurately document the disposition.
6. Prior to the implementation of remedial and/or disciplinary actions, accused members shall be provided with a copy of the Findings of Fact. The Chief and/or appropriate supervisor shall review it with the accused member and explain the reasons for the action.
7. The complainant shall also be given a copy of the Findings of Fact.
8. Either the complainant or the accused member may within 15 days after notification of the disposition requests the Chief, for good cause, to reopen the investigation. The disposition shall be final upon expiration of the 15-day period if there is no 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.

9. When a sustained disposition is final, the accused member may appeal the disposition according to the member's collective bargaining agreement or if applicable, through the Veterans Preference Act.
10. The Chief may suspend an accused member with pay at any time during the investigation of a complaint.
11. This policy procedure shall not preclude other disciplinary procedures for misconduct not initiated by citizen complaint.

10.1.5 MAINTENANCE AND DISCLOSURE DATA

1. 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.
2. 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.
3. The placement of the disposition report or other data in an employee's personnel file shall be governed by applicable collective bargaining agreements and/or personnel policy.

10.1.6 CITIZEN COMPLAINT FORM LETTERS

1. 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 Protection Act.
2. 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.
3. The placement of the disposition report or other data in an employee's personnel file shall be governed by applicable collective bargaining agreements and/or personnel policy.

Date

Name

Address

City, State Zip Code

Dear _____:

This will acknowledge receipt of the complaint made by you on _____, concerning the actions of a member(s) of this department.

An investigation will be conducted into the allegations contained in your complaint. You will be advised of the results of the investigation in approximately three weeks.

Sincerely,

CHIEF OF POLICE

Once the investigation is completed and a finding determined, the complainant is notified of results. Such notification may follow two forms: If the complaint is sustained, the citizen should be apprised that the agency does not condone such action and that corrective action will be taken. If the complaint is unfounded, the complainant will be notified of this with a copy to be also forwarded to the employee.

Date

Name

Address

City, State Zip Code

Dear _____:

An investigation has been conducted into your report of misconduct by a member(s) of this department.

The investigation established that the conduct of the concerned officer(s) was contrary to Police Department Policy.

You may be assured that this Police Department does not tolerate such conduct and that appropriate disciplinary action has been administered.

Thank you for bringing this matter to our attention. If you desire further information regarding the investigation or disposition, please contact the Chief of Police, telephone # 320/239-2525.

Sincerely,

CHIEF OF POLICE

Date

Name

Address

City, State Zip Code

Dear _____:

Your report of misconduct by a member of this Police Department prompted thorough investigation of the incident you described.

Careful examination and evaluation of the evidence established that the actions of the concerned employee were in accordance with the high standards of performance demanded of members of this department.

Please be assured that we desire to provide the best possible police service and are appreciative when given the opportunity to clarify such matters.

If you desire further information regarding the investigation or disposition, please contact the Chief of Police.

Sincerely,

Chief of Police

cc:

10.2.1 WORKPLACE SEARCHES- ADMINISTRATIVE (NON-CRIMINAL)

If an investigation of an employee is clearly focused as a non-criminal investigation, all workplace searches must be conducted with a search warrant or lawful warrant exemption. Written authorization must be provided by the employee to allow for workplace searches.

10.2.2 WORKPLACE SEARCHES- CRIMINAL

If an investigation of an employee is clearly focused as a criminal investigation, all workplace searches must be conducted with a search warrant or lawful warrant exemption.

10.2.3 NON-WORKPLACE SEARCHES

All non-workplace searches must be conducted with a search warrant or lawful warrant exemption.

10.2.4 POLYGRAPH – VOICE STRESS EXAMINATION

- A.** The department shall not directly or indirectly solicit or require a polygraph, voice stress analysis, or any test purporting to test the honesty of any employee (M.S.S. 181.75, Sub. 1).
- B.** If an employee requests a polygraph test, the department or agent administering the test shall inform the employee that taking the test is voluntary (M.S.S. 181.75, Subd. 1). The employee must provide a signed written authorization, authorizing or consenting to a polygraph test.
- C.** The department shall not disclose that an employee has taken a polygraph or any test purporting to test honesty or the results of that test except to the individual tested. Only the tested employee may authorize the test results to be given to any other person (M.S.S. 181.76).

10.2.5 DISCLOSURE OF FINANCIAL RECORDS

Officers are not required to produce or disclose their personal financial records except pursuant to a valid search warrant or subpoena.

10.2.6 RELEASE OF PHOTOGRAPHS

- A.** The department cannot officially release photographs of any officer without written permission of the officer (e.g., for display on television or in the newspaper).
- B.** The department can display a photograph of an officer to prospective witnesses as part of an agency or unit investigation (e.g., photo lineups, etc.).

10.2.7 DRUG AND ALCOHOL TESTING IN THE WORKPLACE

All drug and alcohol testing in the workplace shall be conducted in accordance with City of Lowry Personnel Policy.

10.3 RELIEF FROM DUTY

10.3.1 TEMPORARY RELIEF FROM DUTY

Temporary relief from duty is an administrative action reassigning you to temporary duties, or total relief of duties. If your use of force results in a death to any person, the Chief of Police *will* relieve you from line duty. The Chief of Police *may* relieve you from duty when your use of force results in a serious injury to any person or following serious allegations of misconduct. Temporary relief from duty is:

- **Non-disciplinary** – Temporary relief from duty is a non-disciplinary action without loss of pay or benefits and does not show or imply that you acted improperly.
- **In Your Interest** – Temporary relief from duty is to protect your interests and shield you from community confrontation, although your actions might have been totally justified.
- **In the Community's Interest** – Temporary relief from duty is to protect the community's interest when your actions might not have been justified.

10.3.2 EMERGENCY RELIEF FROM DUTY

The Chief of Police has authority to take immediate action, effecting an emergency relief from duty, with pay, until the next working day. When necessary, the Chief may take such action for the best interests of the police department. The Chief shall document an emergency relief from duty with a written report.

10.3.2.1 SUSPENSION OR DISCHARGE

General provisions of suspension and discharge are covered under the Union Contract and in the Personnel Policy.

During the period of suspension or following discharge, the affected member of the department shall not wear their uniform, shield of office, or receive any pay allowance. Forfeiture of pay allowance shall not apply during suspension with pay.

Evidence of violation of any one or a combination of any of the policies contained within this manual shall constitute reasonable and probable cause for the Chief of Police to discipline any member of the police department in accordance with the provisions of the Union Contract and Personnel Policy.

10.3.3 OFFICER AVAILABILITY

When relieved of duty you must be always available and are subject to recall to duty. Investigators or the Chief of Police may need you during this review time to resolve any unanswered questions, enabling a quick resolution and end to the investigation and review process.

10.4 ACTIONS ON DISCIPLINE

10.4.1 DISCIPLINARY ADMINISTRATIVE LEAVE

- A.** Chief of Police. The Chief of Police may impose all forms of discipline and corrective action granted by policy or ordinance and can recommend the appropriate actions to the City Council in those situations in which the Chief is not empowered to act without first receiving approval from the City Council.

- B.** An employee may be placed on Disciplinary Administrative Leave when the employee's behavior, actions, or physical condition endanger the employee or another person; substantially impair efficient, orderly police operations; or substantially affect the public perception of the department's ability to perform its expected function. Examples of such behavior would include, but not be limited to the following:
 - 1. Reporting for duty under the influence of alcohol or drugs.
 - 2. Insubordination to the point of endangering a human being or endangering orderly, safe, and efficient police operations and practices.
 - 3. Being arrested for, or charged with, a criminal offense which would erode public confidence in the department.
 - 4. Failing to maintain a valid driver's license or P.O.S.T. license.

- C.** Disciplinary Administrative Leave is both temporary and situational. One case may require such leave for hours only, while another may require a leave of several days. During this leave period, the employee is paid his/her normal wage, and is not considered to be suspended.

- D.** Disciplinary Administrative Leave shall be initiated by the Chief of Police or the Personnel Committee and shall prepare a comprehensive report of the incident. The Chief shall then cause the Personnel Complaint process to begin.

10.4.2 PRE-DISCIPLINARY HEARING

Before termination or imposition of suspension (other than by emergency), the Chief of Police will conduct a pre-disciplinary hearing. This will allow you to present statements, explain actions, or provide other favorable evidence. Your legal counsel may be present.

10.4.3 AWARD OF PUNITIVE ACTION

After evaluation of facts and circumstances of a sustained complaint, the Chief of Police will award proper disciplinary action. The Chief of Police has final authority on all disciplinary action.

10.4.4 NOTICE AND RIGHT TO APPEAL

The Chief of Police will notify you of any punitive disciplinary action in writing. You may appeal as prescribed by law, labor contract, or as established by the City.

10.4.5 ALTERNATIVES TO DISCIPLINE

The following alternatives are non-disciplinary, and may, on occasion, be a preference in achieving the desired outcome of future behavior:

1. **Corrective Action Notice** – this notice is designed to improve, modify, or correct an employee’s behavior or performance, while providing documentation of such notice.
2. **Training Recommendation** – employees may not meet performance expectations on occasion simply because of a lack of experience or training. If, in the opinion of a Supervisor, behavior or performance can be modified through training, a written recommendation shall be made to the Chief of Police.

10.5 INTERNAL AFFAIRS REPORTS AND RECORDS

Internal affairs records are confidential and shall be maintained in a secure location with limited access. You may review your own file. Other persons are denied access, except as prescribed by law.

10.5.1 RECORDING AND FILING

The Chief of Police will record all complaints in a permanent record and assign an internal affairs report number.

- **Investigation** – The internal affairs file includes all the following applicable to the investigation: written reports and audio tapes of investigative interviews, offense reports, photographs, and other documentation.

NOTE: Employee personnel files shall not contain originals or copies of internal affairs complaints or investigations.

- **Disposition** – You receive original report of the disposition. The Chief of Police files a copy of the disposition in the internal affairs files, and a copy in your personnel file.

10.5.2 PURGING RECORDS

You may request the Chief of Police to remove a disciplinary disposition from your *personnel file*.

- **Request to Purge** – Send a written request to the Chief of Police, stating reasons to justify removal of a specific record.
- **Authority** – The Chief of Police shall determine to remove an internal affairs record or let it stay on file.
- **Added Requests** – If denied, you may submit another request to remove a specified item six (6) months following the rejection date.
- **Internal Affairs Records** – Internal affairs records will not be purged.